UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 22-10964-MG

- x

In the Matter of:

CELSIUS NETWORK LLC,

Debtor.

- x

United States Bankruptcy Court

One Bowling Green

New York, NY 10004

October 30, 2023

2:02 PM

B E F O R E :

HON MARTIN GLENN

U.S. BANKRUPTCY JUDGE

ECRO: KAREN

HEARING re HYBRID CLOSING ARGUMENTS RELATED TO PLAN CONFIRMATION.

Transcribed by: Sonya Ledanski Hyde

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P R O C E E D I N G S

CLERK: All rise.

THE COURT: Please be seated. Just give me a moment, Mr. Koenig. Good afternoon.

MR. KOENIG: Good afternoon, Your Honor. Chris Koenig, Kirkland & Ellis, for the Debtors. Is there anything you want to address the outset, Your Honor?

THE COURT: No. Let me just, you know, the list of parties who can make opening statements -- closing arguments, rather, was filed and has allocations of time for both the Debtor and the Committee. I'm going to permit, if they want to reserve time for rebuttal, you need to let me know now how much time you want to reserve.

MR. KOENIG: Yes. I'll reserve 15 minutes for rebuttal.

THE COURT: Okay. All right. So I'm going to have one of my law clerks keep track of time as we're going through. Let me just cover the use of demonstratives. So the Court has received, let's see, one, two, three -- five demonstratives to be used. Mr. Phillips a little while ago emailed a -- I think it must've been a PowerPoint to the Court.

He had previously filed, I guess, something as ECF 3913. I'm not going to permit the use -- I don't know whether there's any changes from what he previously

circulated. We have the ECF docket numbers. I gather that can be pulled up on the screen. I'll permit him to use that. For security reasons, if nothing else, we don't permit late sent things that can't be scrubbed for viruses and things like that. So I'll permit him to use what was previously circulated to the Court.

But, all right, Mr. Koenig, let's go ahead.

MR. KOENIG: Deanna, could you please make Mr. Jose Lopez a co-host for sharing the demonstratives?

CLERK: All right. He is a co-host.

MR. KOENIG: Wonderful. Okay, thank you. Your Honor, Celsius' bankruptcy case has gone on for well over a year. This case has sparked strong opinions and pushback from our accountholders, which is more than understandable given that they were defrauded and they lost access to their investments for over a year. Our goal throughout these cases have been to build consensus and return as much value as possible to creditors as quickly as possible, and we've clearly done just that.

Just to remind the Court about the voting results really quickly -- sorry, next slide. The -- nearly 98 percent of our accountholders voted to accept the plan and every accountholder class separately voted to accept the plan. And the interesting thing is there's actually very few open issues remaining for the Court to decide here

today. Nearly most of the confirmation requirements pursuant to Section 129 of the Bankruptcy Code have been established by the Debtors that are actually uncontested.

We filed a very robust brief in support of confirmation in Slide 37 of this presentation -- which we don't need to skip to -- lays out each of the confirmation factors and points to the evidence that's in the record, satisfies each of those factors.

This case is very complicated and there's a lot of strong opinions on all sides. But in this argument, I'm going to focus on what the Court has to focus on today and that's the remaining outstanding objections and the relevant legal standards.

THE COURT: Am I correct, you -- I think I saw it in ECF a little while ago the revised disclosure -- findings of fact and conclusions of law.

MR. KOENIG: That's right, Your Honor. What we've done is we worked through the weekend with some of the remaining objecting parties, including most notably the U.S. Trustee, the SEC, and several other parties and I'm pleased the report and we'll be reporting in a little bit more detail, we've resolved a number of objections and that was what the revised order was meant to address was to incorporate agreed language.

We understand that account holders want all of

their crypto back. That is simply not possible under the circumstances. Celsius does not have it. It's also not the legal standing for confirmation; although, to be clear we're striving to return as much crypto as possible under the plan.

For the most part, the relevant legal standard before the Court today is best interests because for each of the remaining objecting parties, their class voted to accept the plan. And so the question is, does the plan meet the best interest test with any -- with respect to any dissenting parties? So just really quickly, I want to -- I want to overview some of the recently resolved objections and highlight the remaining objections.

We've built a lot of consensus in this case over time. We've worked constructively to resolve as many issues as possible. We have a number of parties that affirmatively support the plan. Of course, the Creditors Committee, each of the formal ad hoc groups of creditors in this case, Ignat Tuganov, and many other. Many account holders that used to oppose everything in these cases now support the plan, too. And as I mentioned a moment ago, we've resolved many objections since the start of the confirmation hearing itself, starting with the U.S. Trustee.

We've resolved nearly everything with the U.S. Trustee. I understand that there's a handful of open issues

that she still has. I'll let her articulate her remaining issues and then I'll respond in rebuttal. One of the issues I wanted to flag for Your Honor was you raised the issue at the conclusion of the trial of the idea of naming the released parties in a little bit more detail. So following the hearing, we met and conferred with the U.S. Trustee and the Committee and we've come to an agreement on some additional disclosure that should help to bolster the record.

What we will do is we will file a list of the released employees that will be attached to the confirmation order. It's about 70 individuals. And we've modified the confirmation order to make additional disclosures about the releases as well. We're naming the members of the Special Committee of the Debtors by name. We're referencing the members of Fahrenheit by name. The references to the Ad Hoc Groups in the releases are qualified by referencing the Rule 2019 disclosures they filed just so the record is clear about what is the member of an Ad Hoc Group at any particular time.

We've resolved a number of other objections as well, in addition to the U.S. Trustee who again has a few issues remaining. We've resolved with the consumer privacy ombudswoman. There's language in the confirmation order. I understand she no longer opposes confirmation. I believe

she's going to file a final report just for the record. We've resolved with the securities law plaintiffs. We've resolved regarding the ADR procedures which Your Honor has heard about on a number of different hearings and we finally managed to close that out. And Pharos, who objected early in this case, resolved its objection -- withdrew its objection as well.

So if you look at the parties who are going to speak today that oppose confirmation, there's only a few people that still oppose the plan and they can be grouped into a few main categories, being first CEL token obviously, the board appointment issues, the retail loans, and the emergence incentive plan.

Let me start with CEL token. So CEL token was the most contested issue during the confirmation trial. There are strong opinions by both CEL token holders who want to maximize the recovery and non-CEL token holders who don't want to be diluted by the CEL token holders. The CEL token settlement was designed to try to resolve this contested issue and get support for a middle ground of 25 cents per CEL token, and that settlement was overwhelmingly accepted by both CEL token holders and non-CEL token holders alike.

I talked about the general support for the plan but for CEL token holders specifically, 98.71 percent in number and 96.06 percent in dollar amount voted to accept

the plan --

THE COURT: There is no class but there were -- there was a separate report done that isolated out the CEL token holders in each of the voting classes.

MR. KOENIG: That's exactly right, Your Honor. We tried to do that just so we could understand what the separate support for the settlement was from the most effective group of creditors, that being the CEL token holders.

So that means that the questions before the Court on CEL token are actually pretty narrow. The first question is, should the CEL token settlement be approved, and the second settle -- the second question is, does the CEL token treatment meet the best interest test. The answer to both questions is yes. First, the settlement meets the standard set forth in this district for settlements pursuant to Bankruptcy Rule 9019.

This Court has, for better or worse, had the opportunity to consider many settlements in this case and the standard throughout has been the iridium factors. I won't focus on all the factors, but just to focus on key ones, this litigation would certainly be protracted and complex if it were fully litigated, in particular, some of the security issues that have been raised. Both CEL token holders and non-CEL token holders overwhelmingly voted to

accept the plan and the settlement.

So the question for the Court is whether the settlement falls below the lowest point in the range of reasonableness, and it does not, particularly when the settlement was incorporated in the plan and creditors overwhelmingly voted to accept the plan. Turning to best interests, the plan's treatment of CEL token clearly meets the best interest test as well.

The threshold question is, what is the value of CEL token under a Chapter 7 liquidation, at which point, best interest test would be violated. And again --

THE COURT: On the petition date.

MR. KOENIG: On the petition date. And again, I said the word value and that was intentional. Value is different from price, as both Mr. Galka and Mr. Faraj testified during the trial. So Mr. Compagna from Alvarez and Marsal testified about the issue of at what value of CEL token as of the petition date the best interest test would no longer be met. And his testimony on this point was actually uncontroverted.

He said that the point at which the best interest test is no longer met is any value for CEL token under a Chapter 7 liquidation that is at or above 34 cents for the orderly winddown and any value at or above 36 cents for the NewCo transaction. So the question before the Court is

simple. Is the value of CEL token as of the petition date in a Chapter 7 liquidation lower than 34 cents?

Now, the Court heard from both Mr. Galka and Mr. Faraj on this point and they actually agree on a lot of the key points. They both agreed that CEL token is a utility token. They agree that CEL token had no utility after the pause. They agree that the market for CEL token was dislocated and disrupted, and the market price is not a reflection of the actual value of the CEL token on the petition date for that reason.

They also agree that the only remaining value for the CEL token as of the petition date was speculative value. That is, that CEL token would have some utility in the future because they both agreed it had no utility as of the pause, much less the petition date. The main difference in their analysis is what is the speculative value of CEL token as of the petition date?

Mr. Galka's testimony was very clear. The value of CEL token as of the petition date is zero or near zero. On the other hand, Mr. Faraj's testimony is confusing, inconsistent, and unreliable. He agreed with Mr. Galka that CEL token had no utility post pause and that the only remaining value as of the petition date was speculative. Nonetheless, his analysis and his report focused on actual trading data from before the pause, which is when CEL token

still had utility on the platform.

So how could that have any bearing on the speculative value of CEL token on the petition date when he admits that there was no utility anymore? And that's really the key flaw in Faraj's testimony and why it should be given no weight. On the one hand, he says that the only remaining value as of the petition date is speculative because there's no utility, but he uses pre-pause pricing to support his theory on valuation.

There's lots of other reasons why Mr. Faraj's testimony is not reliable and should be given no weight. I'm not going to waste a lot of time on this argument focusing on it, but a couple of the key points, he's not a qualified expert, for the reasons that we set forth in the motion in limine that we filed at Docket No. 3817 prior to his testimony. He doesn't have a degree in this area. He's never performed this type of analysis before. He's never presented to a Court before.

His report is not even his opinion. It's an artificial intelligence that actually wrote the report. And he relied on the artificial intelligence for more than just typing words on the page. He had to ask the AI substantive questions including, notably, whether the analysis he was using could be used to value CEL token as of the petition date. That was an astonishing fact and that alone should be

disqualifying in and of itself.

There's some other reasons that his testimony isn't reliable, either. First, he admitted that it took longer to read the report than to write it. He admitted that there were significant errors including that he gave the artificial intelligence that wrote the report, the wrong date ranges for the analysis. He testified that the dates should have been May 21st to June 9th, that the AI analyzed for the trading data, but the report instead said "The value from June 9th to June 12th might be the most representative of CEL's share value in the least manipulated market conditions."

That wasn't what he meant. It was just a goof. And Mr. Faraj and his artificial intelligence are both confused about key issues. He asked the artificial intelligence at one point about something relating to the "petition (pause) date." Those dates are different dates. They're a month apart and that's a really substantive difference.

The value of CEL token almost certainly declined during that period as the pause went on and the CEL token utility did not return. That's what Mr. Ferraro testified. But Mr. Faraj is confusing the petition date and the pause date, not only here but in other places in his report as well. That's all I have to say about Mr. Faraj.

Mr. Faraj was Mr. Davis' purported expert witness, but Mr. Davis himself also testified about CEL token. Mr. Davis is certainly vocal and even persistent about CEL token, but his testimony is also internally inconsistent and should be given no weight. He suggests four different values for CEL token in his sworn testimony. Each one is more outlandish than the last.

He suggested in the same document that the value of CEL token as of the petition date should be either 81 cents, 86 cents, $2.01, or $2.88. At the same time, he admits he's not an expert on valuation and none of those four prices are the same price that his purported expert came up with either.

Now, during cross examination, Mr. Davis was confronted with various contemporaneous statements that he made about CEL token and its value and utility. For example, post-petition, he called CEL token worthless. On many occasions even before the pause, he openly complained about CEL tokens' lack of utility. Now, on cross examination he tried to explain those away as mere hyperbole, I think is the word he used. But those statements are his contemporaneous reaction to CEL token when it is not during a trial that Mr. Davis personally stands to economically benefit from.

So I would respectfully submit that when the Court

evaluates Mr. Davis' testimony, it's clear that Mr. Davis' views on CEL token shift to meet whatever his objective is at the moment. When he was trying to convince Mr. Mashinsky to add utility to the CEL token prepetition, he said that CEL token had no useful utilities.

When he was trying to prop up his own importance, he told Mr. Mashinsky that he orchestrated the short squeeze. He then testified in Court that he didn't orchestrate the short squeeze. And now when Mr. Davis stands to benefit economically from the value of CEL token, he's insisting that it is worth up to $2.88 as of the petition date.

Before moving on from CEL token, I just want to flag one more CEL token related item for Your Honor. In our supplemental brief, we explained this a little bit. The plan actually contemplates that it's a defined term, the other CEL token claims which are defined as claims related to the purchase or sale of CEL token, would be subordinated pursuant to Section 510(b) of the Bankruptcy Code.

During this trial, we have endeavored to provide the Court with evidence to make a finding on the value of CEL token that would obviate the need for the Court to reach a ruling on the security issue or the applicability of Section 510(b). So, what we've done is we've modified the confirmation order to make that more clear with respect to

this other CEL token claim issue.

The reason we can do that is the class claim settlement actually resolves almost all of these types of claims. Again, the class claim settlement provided every accountholder with the opportunity to opt out and if they did not opt out, their claim was limited to the crypto on the platform. So if they opted out, they still have the right to pursue their other CEL token claim for purchase or sale of CEL token, and that will be resolved during the claims allowance process.

Your Honor does not need to decide that issue today. It has been carved out of the confirmation order so that all Your Honor has to decide today is, is the value of CEL token less than 34 cents, not is CEL token a security. And again, we explained this in a little bit more detail in our supplemental brief that we filed last week.

So turning to the retail loan issue having gone through --

THE COURT: Let me stop you there.

MR. KOENIG: Sure.

THE COURT: Few minutes. I want to go through the -- how you arrive at figures for CEL token under the NewCo scenario, winddown scenario, and the liquidation scenario.

MR. KOENIG: Sure.

THE COURT: Okay. So under the NewCo scenario,

what is the projected percentage recovery? Not the value of the token itself, but the percentage that they would recover from whatever that value is.

MR. KOENIG: Right. It's 67 percent under the NewCo scenario. What was what was in the disclosure statement.

THE COURT: And the 25 cents, that's equal to 0.1675.

MR. KOENIG: Mm hmm.

THE COURT: Okay. On the orderly winddown, it's what, 61.2 percent?

MR. KOENIG: That's right, Your Honor.

THE COURT: And that translates into 0.1530.

MR. KOENIG: Mm hmm.

THE COURT: And the liquidation projecting it as 47.4 percent?

MR. KOENIG: That's right, Your Honor.

THE COURT: All right. And that's 0.1185. All right. So if the CEL token is valued at 25 cents, what does that mean for the actual recovery under the three different scenarios, NewCo, orderly winddown, liquidation recovery?

MR. KOENIG: Right. So Your Honor, what you would do is you would take the 25 cents and you would multiply it by the recovery under the NewCo and the orderly winddown, 67 cents for the -- 67 percent I should say, to avoid

confusion, and the lower number, the 61.5 or whatever the number is on the orderly winddown.

And then what you have to do is on the other side of the equation, I've mentioned several times how lawyer math is challenging, but when you have -- what you take, is you take Mr. Compagna's testimony that at 36 cents is when it is violative. You take the 36 cents and you multiply it by the liquidation value of 47 and change, and then you compare those two numbers and that's the point at which they intersect.

There's the -- can we go back to the slide that had the graph on how that works? And that's how Mr. Compagna ran those calculations was on the bottom, you have the CEL token claim in the liquidation and the liquidation, that line is multiplying the prices, the value, I should say, on the bottom by the 47 and change that's under liquidation, and then the lines that are left to right are the steady state value of here's where it would be violated under the NewCo scenario.

THE COURT: Okay. So actually, it's forty -- to determine the liquidation value, it would be 47.4 percent times what?

MR. KOENIG: Times -- so if you go to 34 cents and you multiply 34 cents times 47 and change --

THE COURT: Okay.

MR. KOENIG: -- the number you get should be -- that's the inflection point of 25 cents times the orderly winddown amount.

THE COURT: I think that's 15.3 percent -- cents.

MR. KOENIG: I'm saying, you're going to do both calculations and those numbers should be almost identical. That's where the inflection point is.

THE COURT: Okay. All right.

MR. KOENIG: Okay, so moving on to the loans issues, the retail loans. So the main objector here is Mr. Bronge and this is the issue of whether or not the cryptocurrency that was transferred to Celsius to support the loans is property of Celsius or property of ---

THE COURT: Which number slide is that on the screen?

MR. KOENIG: Number 19, Your Honor.

THE COURT: Okay. All right. I have the slide deck in front of me.

MR. KOENIG: I believe that even Mr. Bronge admits that Version 9 transferred title to Celsius. The question he has raised is whether Version 7 transferred title. So if we click through. So here is Version 7 with some of the relevant language highlighted. And it says, "You, Borrower, grant Celsius the right" -- words, words, words to, and then we see the highlighted language we've seen before --

THE COURT: Pledge, repledge, hypothecate, et cetera.

MR. KOENIG: Right. And then there's some other keywords here, too, "with all attendant rights of ownership."

THE COURT: Got it.

MR. KOENIG: We think that's very clear. Now if you go to two more slides, there's a redline between Version 7 and Version 9 that shows the words that were changed between Version 7 and Version 9. And what Mr. Bronge is focused on is at the bottom here where it was an A and now it's a 1, the words were in Version 7, "you may not be able to exercise certain rights of ownership." And in Version 9 it says, "you will not be able to exercise any rights of ownership."

So what we would submit to Your Honor is the language was already clear in Version 7. We think this is the same analysis as your Earn opinion, when you ruled that Version 5 was clear, not it just got more clear over time. And what I would focus on, "you grant Celsius the right to" -- words, words, words -- "pledge, repledge, hypothecate with all attendant rights of ownership." Those are the key words. These other words make it a little bit more clear, but we think that it was clear enough before.

Moving on to the board appointment issues, I

suspect that Mr. Colodny is going to address this topic more squarely in his remarks, given that the Committee was the one to select the board. But I wanted to make a couple of observations from the Celsius side of things. The standard for the Court is Section 1129(a)(5)(A)(ii) of the Bankruptcy Code which asks whether the board selection is consistent with the interests of creditors and with public policy.

On the one hand, you have sworn testimony from a Committee member, Major Mark Robinson, regarding the board selection process and how robust it was. There's actually been more testimony on this point than any case I've ever been part of. Usually, we just file a schedule and it's part of a plan supplement and off we go. But being as it may, on the other hand, the only evidence that you actually have is the sworn testimony of what amounts to a disappointed and resentful would-be board member, Mr. Rick Phillips.

Mr. Phillips admitted during cross examination that he would not have objected to the plan if he was selected to the board. He even voted for the plan even after he learned that he was not selected to the board. And those two points are enough to discount his testimony and give it no weight. The testimony of Major Robinson was extensive and credible. Mr. Phillips is not. The decision for the Court is simple on this point.

Turning to the emergence incentive plan, I'm not actually certain if anybody's even objecting to this anymore. We resolved with the U.S. Trustee regarding the emergence incentive plan, but I just want to point to a couple of the uncontroverted facts in evidence.

THE COURT: Mr. Ubierna?

MR. KOENIG: I don't -- I didn't see him objecting -- I didn't see him providing closing this afternoon, Your Honor.

THE COURT: Okay.

MR. KOENIG: But again, just for the record, I want to make sure that we point to the record and talk about the legal standards for a moment. First, I want to say we know that executive bonuses are a hot button issue for accountholders who were defrauded and are not going to receive 100 percent of their investment. But the management team who defrauded those account holders is gone.

This is a different management team, none of whom were involved in the prepetition wrongdoing. The management team led by Chris Ferraro who was hired just a few months before the petition date, Mr. Ferraro got a battlefield promotion, first to chief financial officer and then to CEO after the Special Committee told Mr. Mashinsky to either resign or be fired.

This new management team ran into the burning

building to help stabilize this business and get distributions back to accountholders. These employees have stayed with Celsius for over a year to see this through on sub-market pay. The simple fact of the matter is we would not be here today without these people working around the clock to maximize value and get distributions out to creditors.

What these executives are being incentivized to do under the EIP is key to creditor recoveries. The metrics include making liquid crypto distributions available. The target is within 30 days of the effective date. There's over $2 billion of liquid crypto distributions that have to be made.

That requires negotiating distribution agreements with PayPal and Coinbase, significant coordination with those distribution agents to make sure that they're ready to distribute all of this liquid cryptocurrency to our stakeholders. And Celsius itself is going to keep its platform open for 90 days to make distributions to Custody holders under the plan.

So there are several possible standards of review for the EIP. We outline this further in our confirmation brief. The main issue is, does Section 503(c) of the Bankruptcy Code apply or not. We think the right standard is best interest and that Section 503(c) doesn't apply at

all. We think that that is the case because the distribution is not to be made by a Debtor.

It's going to be made by a post-effective date Debtor. It's going to be overseen by the plan administrator, not by a Debtor. The Bankruptcy Code doesn't apply to the post-effective date Debtors or to NewCo or any other post-emergence entity and it shouldn't apply to this payment either. But we think that we meet Section 503(c) even if that section does apply, because the EIP is an incentive-based program with performance metrics that are not easily achievable, and that's what the evidence showed.

So Mr. Ferraro testified that it was a herculean effort, the work that had to be done, particularly with respect to the distributions, and that it would normally be months and months of negotiation that we were packing into a short amount of time. Next slide.

He pointed out that these targets were a stretch and that several of them are not going to be achieved and that they were trying like hell, but that he wasn't sure that they were going to meet those metrics. He also pointed out that these metrics were negotiated extensively between the financial advisors for the Debtors and the financial advisors for the Creditors Committee.

Ms. Hoeinghaus testified about the market, the market salaries, and other compensation for executives and

that the EIP participants of Celsius were significantly below the market. If you can go to the next slide. And she testified that an incentive program was "very much necessary here to ensure that market levels of compensation would be offered to key executives." Next slide.

And the -- she pointed out that the EIP costs were significantly lower than most other KEIPs in other bankruptcies. Next slide. And she also concluded that the EIP is "very reasonable in terms of the amounts and the opportunities." Next slide.

Your Honor, that covers the big buckets of issues. I just want to cover really quickly, Mr. Kirsanov's issue. He makes a variety of arguments and I'm not going to try to preempt all of them, but I wanted to make a few quick points. He's now claiming that we improperly changed his Custody vote on the plan, but just to reiterate, he accepted the Custody settlement and actually withdrew his Custody coins off the platform consistent with that settlement.

That settlement and order specifically provided that any accountholder who accepted the settlement and voted no on the plan or abstained from voting would be deemed to have voted to accept. It was clear in the settlement. It was clear in the disclosure statement. But even assuming Mr. Kirsanov is right on that point, which he's not, there would be no legal difference. He suggests that the subclass

of Custody CEL token holders voted no on the plan, if his vote was not changed, consistent with the Custody settlement. But there is no such subclass.

That doesn't change the legal standard before the Court. There is simply a class of Custody holders who overwhelmingly voted to accept the plan. Mr. Kirsanov also argues that we violated the Custody settlement which is perplexing given that he actually withdrew all of his coins off the platform when he was entitled to withdraw back in May.

I think he's complaining that it took us too long to make distributions, but the settlement only required that Celsius make distributions "as soon as reasonably practicable," and we did just that. We made distributions about a month after the settlement opt-in period ended in April. The remainder of his argument is essentially the same as the other CEL token holders' argument. To the extent the Court finds that the value of CEL token is -- on the petition date is higher than 34 cents in a liquidation, the plan is going to fail best interest. If it's lower than 34 cents, it's going to pass best interest and his objection should be overruled.

Your Honor, the last thing I want to talk about before sitting down is the SEC and Form 10. We've talked before about the Form 10 process. That's a condition

precedent to the effective date. Since we last discussed this at the beginning of the confirmation hearing, we have continued to work constructively with the SEC, the Creditors Committee, and Fahrenheit to move this important item forward.

We've been discussing a preclearance letter with the SEC and the other parties, which if the SEC approved, would pre-clear one of the key issues for the Form 10, which is the fact that Celsius will not have audited financials for the historic customer facing businesses, other than the mining business. We will have audits of the mining business.

And because Celsius' historic customer facing businesses will not be continued by NewCo -- the Earn program, the Loan program, et cetera -- we believe it is totally appropriate to not provide audits of those businesses through the Form 10 process. We think there's no benefit of those audited financials for a defunct business line. But it is a typical SEC rule that audited financials of all the predecessor entity would be provided as part of the Form 10, so we need to seek SEC approval of a waiver of this provision under the circumstances, which we have done.

And just to be clear, this process would be needed under any scenario, be it the NewCo scenario or the orderly winddown. Anything that includes a new company that issues

equity has to go through this process with the SEC. We've continued to have constructive discussions with the SEC. We have not received their signoff. We're pleased with our recent constructive discussions. We hope to continue to make progress in the near term.

Now, if and when the preclearance letter is received, we will promptly file the Form 10 itself with the SEC. That Form 10 will include the audited financials of the mining business. We're currently expecting we can file that Form 10 sometime in mid-November. The filing of the Form 10 kicks off an automatic 60-day waiting period.

Now, from our constructive discussions with the SEC, it seems that it might take longer than that automatic 60-day period to receive and incorporate all of the SEC's comments. We've committed to work with the SEC to ensure that all of their comments are incorporated before the Form 10 goes live, so it is possible that it may take longer than 60 days for the Form 10 to go live.

On the other hand, we've committed to making liquid crypto distributions to our account holders under the plan as soon as possible. And so as we go through this process post-confirmation, we, the Creditors Committee, Fahrenheit, we're all going to continue to evaluate the timing of the SEC process. If it looks like the Form 10 process is going to drag a little bit and take us beyond

very early in 2024, I suspect we will come back to Your Honor with some sort of post-confirmation motion in aid of distributions or something that would allow us to modify the plan to make distributions sooner to accountholders.

It's not an issue for today. We wanted to update Your Honor and the other partis on this important process and let everybody know we're going to be evaluating this issue. We want to get liquid crypto distributions out to people as soon as possible, even if the Form 10 isn't yet approved.

Now, we have had the goal of opening liquid crypto distributions by the end of this year. We will continue to evaluate it, but obviously, these transactions are very complicated. We want to make sure that all these distributions can be made smoothly, securely, fairly, all the rest of it. Currently, it seems more likely than not that those distributions probably begin the first few weeks of January instead of the last few weeks of December, and we think that there's probably another benefit to having distributions begin in January for accountholders anyways.

This is not tax advice, but if distributions are received in December they would have to file and pay taxes in April of 2024. If those distributions are received a few weeks later in January, those taxes would not be due until April of 2025. So we'll continue to evaluate the process,

provide updates to Your Honor and to the parties, but we wanted to update you on this important process. So with that, unless Your Honor has any questions for me, I will sit down.

THE COURT: Thank you very much, Mr. Koenig.

MR. KOENIG: Thank you.

THE COURT: All right. Who's arguing for the Committee?

MR. COLODNY: Good afternoon, Your Honor. Aaron Colodny from White & Case on behalf of the Official Committee of Unsecured Creditors.

THE COURT: Are you reserving any of your time?

MR. COLODNY: As always, I'm batting second, so I think that some of my comments would be duplicative and I'll try to streamline. I'd like to deserve 10 minutes at the end, and hopefully take 20 minutes, probably less.

THE COURT: Okay. Go ahead.

MR. COLODNY: Your Honor, these cases have been challenging. Unlike a lot of large Chapter 11 bankruptcies that we see where the main creditors are companies, the primary creditors here are individuals who entrusted their coins and in some instance, their life savings to Celsius. At the beginning of this case, it faced a complete wipeout. That's a lot different than what we normally encounter and the Committee and its professionals were acutely aware of

our responsibilities here.

These cases involve relatively new and novel industry thrust into a period of prolonged distress. The legal framework and the application of bankruptcy law to that industry was uncertain and they were made a lot more difficult by the fact that Celsius misled its customers and that the company's financial records, investments, and legal agreements were a mess.

It's against this backdrop that the Committee was faced with the complicated task of investigating the prepetition actions of the Debtor, assessing the legal rights of the creditors and equity holders of the Debtors, and how to allocate the value among those constituencies maximizing the value of Celsius' distressed mining business and other liquid assets, creating a way for creditors to monetize their share of those liquid assets and addressing the constant and quite natural questions, concerns, and criticisms from our constituents.

By working in good faith with creditors, regulators, and the Debtors, the Committee was able to work with the Debtors to formulate a plan that addresses each of these issues. Causes of action against wrongdoers like Mr. Mashinsky and others who took advantages of customers will be preserved. All available assets will be distributed in an equitable manner. NewCo will be formed and the best in

class management team will grow the management moving forward and the shares of Newco are intended to be traded on a public market.

The overwhelming support from the plan is a testament to those good faith efforts. It's also evidence of an overwhelming desire to exit Chapter 11, cut off the administrative burn, and return value to creditors. Now, Mr. Koenig detailed a number of objections in his remarks. I'm going to focus on two. The first is the value of CEL token, which I hope not to be duplicative, and the second is Mr. Phillips' demand to reconstitute the board and request that Committee professionals be excluded from the exculpations.

Turning to the first issue concerning the CEL token, as Mr. Koenig went over, the Court does not need to determine at this time whether CEL token is a security. That arrangement is now noted in Paragraph 262 of the revised confirmation order which was filed this morning at 3937. That provision's unchanged from the previous version that the Debtors and the Committee filed following the closing of confirmation -- or evidence at confirmation.

So the relevant question, as Your Honor went through with Mr. Koenig, is whether the proposed 25 cent settlement of the value CEL token provides the dissenting holders with at least as much as they would receive under

general liquidation under Chapter 7 of the Bankruptcy Code. The testimony presented at confirmation unequivocally supports this finding.

Your Honor went through Mr. Compagna's testimony which shows that below 34 cents, the best interests of creditor test is met. No party has disputed that. Mr. Galka of Elementus testified in his opinion, the market price of CEL token was not indicative of its value on the petition date because the market was extremely dislocated. He believes that CEL token had de minimis and likely zero value as of the petition date.

And Your Honor asked the $208 million question of Mr. Galka, if he had a view of hypothetically what the value of CEL token would be if you knew at the petition date the Debtors would be liquidated, in other words, the hypothetical Chapter 7 liquidation that the best interests of creditors test provides. And Mr. Galka's response, "I think in almost all circumstances, I would see the value as being zero." That's at the October 4th hearing transcript, Page 38 Lines 8 through 13.

That testimony is not seriously contested by the creditors who rejected the proposed CEL token settlement. Mr. Otis Davis sought to introduce the expert testimony of Mr. Hussein Faraj, and as detailed in the Debtors' and Committee's motion to exclude Mr. Faraj's testimony and was

detailed by Mr. Koenig which is filed at Docket No. 3817, Mr. Faraj's opinion is not reliable. But even if the Court were to consider Mr. Faraj's testimony, it supports Mr. Galka's de minimis value. \Both experts agree that CEL token was manipulated prior to the petition date. Both agree that the market for CEL token became severely dislocated prior to the petition date. Both agree that because of that dislocation, the market price of CEL token on the petition date was not an accurate indication of its value and both agree that CEL token had not intrinsic value on the petition date.

Both agree that the CEL token had speculative value on the petition date. Mr. Faraj, however, offers no opinion as to that speculative value. Rather he looks at prices prior to the pause date to determine a fair market value. Mr. Galka, on the other hand, states that as a utility token of a bankrupt company where the platform was not likely to survive, the speculative value of CEL token was likely de minimis on the petition date.

And if the Court assumes the platform was not to survive, as it must in a hypothetical Chapter 7, the value is likely zero. Even Mr. Davis' testimony supports this proposition. Specifically, when asked why he called CEL a worthless token after the petition date, Mr. Davis admitted it was because it didn't have any utility and he admits it

did not have any utility following pause date. That's not hyperbole.

Based on the evidence presented, the issue is not close. The CEL token settlement was accepted by an overwhelming majority of creditors and it should be approved under 9019. It also meets the confirmation requirements of the Bankruptcy Code.

Now, turning to Mr. Phillips' objection as to the exculpation of the Committee professionals and members. Section 1103(c) of the Bankruptcy Code grants the Committee broad authority to formulate a plan and perform other services that are in interest of those represented. As the Third Circuit found in in re: PWS, which is 228 F.3d 224, that provision implies both a fiduciary duty to the Committee's constituents and a limited grant of immunity to the Committee's members and professional.

In the LATAM decision, Judge Garrity reiterated that position when he said, "It is well settled that an exculpation clause approved at confirmation may exculpate estate fiduciaries like a Committee, its members, and estate professionals for their actions in a bankruptcy case, except where those actions amount to willful misconduct or gross negligence."

Judge Garrity went on further to describe the purpose of exculpation stating that "exculpation provisions

are frequently included in Chapter 11 plans because the stakeholders all too often blame others for the failures to get the recoveries they desire, seek vengeance against other parties, or simply wish to second guess the decision makers in the Chapter 11 cases." And that LATAM opinion is 2022 Bankruptcy Lexus 1725 at star 158.

Here, the exculpation provisions included in Section 8(e) of the plan include carveouts for bad faith, gross negligence, and willful misconduct. It also explicitly limits the actions to the period during these cases. These provisions are customary, they accurately restate the law, and they should be approved. Now here, the Committee members and its professionals have all proceeded in good faith. That includes attending over 120 official meetings and countless other calls with the Committee, the Debtors, bidders, mining counterparties, the regulators, and other contract counterparties.

The Committee has taken a proactive role to protect the interest of customers in these cases, including by moving swiftly to ensure that wrongdoers were removed from power, that coins were secured, and that estate causes of action were preserved which included preparing and filing its own draft complaint which is preserved under the plan.

The Committee cooperated with the examiner in her investigation of the Debtors and communicated with the

accountholders both individually and through public town halls. The Committee attended and participated in the auction to determine the plan sponsor. It participated in mediations regarding the treatment under the plan and litigation and it conducted a thorough process to select the proposed board of directors for NewCo.

Now throughout that process, the Committee's advisors have made sure to keep its members informed of the facts in the case, applicable law, the Debtors' financial condition, and their discussions with other parties. And while not remarkable, I want to highlight that our Committee members have directly interfaced with the other principals involved in these Chapter 11 cases.

Our two co-chairs have weekly meetings with Chris Ferraro, the interim CEO of the Debtors. Our Committee members met with the bidders throughout the auction. They also interviewed the board of director candidates and all of those interviews were videotaped so that those Committee members that did not attend could watch the interviews.

I also want to be clear that contrary to what Mr. Phillips may believe, the decisions made throughout these cases have been made by the members and not their advisors. That was made abundantly clear by Major Robinson when in response to a question from Mr. Phillips of whether the advisers were involved in the decision to select Fahrenheit

as a plan sponsor, Mr. Robinson unequivocally stated, "They advised us, but we were the ones who voted and made the decision." That's at the October 3rd hearing transcript, Page 223 Lines 7 through 14.

And as we previously disclosed to the Court, prior to the beginning of the confirmation hearing, the Committee members unanimously ratified all decisions that have been made throughout these Chapter 11 cases. Now, this was not the typical Committee representation. Rather, the Debtors look to the Committee to make difficult decisions regarding the formulation of the plan of organization and the Committee is aware that its decisions directly impact the recovery of creditors, and many creditors disagree with certain of those decisions.

However, there can be no question has adeptly represented its constituency throughout these Chapter 11 cases. Put simply, the Committee as a whole have dedicated the better part of the last 15 months to working in good faith to reorganize Celsius. That also includes Mr. Keith Noyes, who has dedicated hundreds of volunteer hours working in good faith to advance the interests of Celsius' unsecured creditors and any insinuation that the Committee has acted in bad faith is completely unfounded.

Now, I want to return to the confirmation standard. To confirm the plan, this Court must find that

the selection of the board is consistent with the interests of creditors and public policy. And here, the evidence demonstrates that it was. Your Honor heard testimony from Major Mark Robinson regarding the Committee's efforts specifically with respect to the board process.

Mr. Robinson testified the Committee considered 45 candidates for board positions. Those candidates were select -- sourced from direct inquiries from interested candidates like Mr. Phillips and suggestion from other active creditors like the Earn Ad Hoc Group. The Committee also asked its advisors to submit candidates from their professional networks. All connections with advisors were disclosed to the Committee. All candidates except the three committee members who submitted themselves for positions were considered for all spots and that includes again, Mr. Phillips.

Those members who put their hat in the ring recused themselves from voting on the two positions they were eligible for and while the Committee advisers participated in certain of those meetings, the discussions of each individual's candidacy was largely driven by the members of the Committee and the Committee members had many independent discussions regarding the proposed candidates.

Most importantly, the Committee members selected the candidates that they thought were best suited for the

job and would best advocate for the interests of creditors who following the effective date would be NewCo shareholders. The board was announced in the second plan supplement which was filed at Docket No. 3444 -- getting quite high now -- on September 8th, 2023. Mr. Phillips was -- testified that he was provided with advance notice of selections.

Mr. Phillips and all the creditors had ample time to conduct discovery into the board selection process prior to the beginning of the confirmation hearing. Mr. Phillips and all of the creditors were provided with the opportunity to cross examine Mr. Robinson and none of the testimony elicited rebutted any of the testimony I just recited.

There is no evidence of any inappropriate relationship between the board and the members of the Committee who selected the board. There is no evidence the Committee acted on less than full information and there's no evidence that the proposed board does not reflect the Committee's business judgment as the best candidates for the role, nor does the evidence establish that Mr. Phillips was not given a fair opportunity.

Mr. Phillips has an unsupported theory to the contrary, which lacks any evidentiary or legal support. Put simply, Mr. Phillips believes that the Committee is not capable of making its own decisions and was led by the nose

by its professionals.

He believes that it is provable malpractice for a professional to, upon the request of its clients, provide them with its recommendations for potential candidates, for that professional to select candidates based on its own experience working with board members instead of just simply nominating strangers, for the professional to disclose its experience and connections to those individuals to both its clients in the Court, and to have its clients and instruct its clients and advise its clients to consider all available candidates.

That cannot be the case. Mr. Phillips has identified no breach of duty by the professionals or the Committee here. At best, he's trying to substitute his business judgment for those of the creditors who were appointed as a fiduciary; and at worst, he's trying to weaponize his disappointment in not being selected. Neither have any merits.

Finally, although Mr. Phillips attempts to minimize the three board observers, it's everyone's hope that they will be an important part of the NewCo board room. Those creditors will have a seat at the table, receive the information the board receives, and provide input to improve the NewCo for all shareholders.

Mr. Phillips' issues with the valuation of NewCo

are likewise unsound. For instance, he points to a reduction in the initial investment of Fahrenheit from 50 million to 33 million, but he ignores Mr. Kokinos' testimony that the full $50 million investment is required if the plan sponsor serves the entire five-year term and the arrangement allows the company to terminate the management team earlier if it does not perform as anticipated.

In essence, this feature gives a valuable option to NewCo to move on from the chosen management team if things are not going according to plan. Now, we all hope that's not the case, but provision to Mr. Phillips' site was a hard fought improvement that was won for creditors, not a material detraction as he says. He also selectively recites on the record when -- excuse me, Your Honor. When he questioned Mr. Kokinos, he again selectively argues that this should have been structured as a termination fee. It's more Monday morning quarterbacking.

Similar, he claims that more -- that NewCo should be valued at more than a third less than the opinion of the Debtors' experts because certain creditors, and a large amount of creditors, elected to receive more liquid cryptocurrency than Equity. It's not true. It is true that more liquid crypto -- that more creditors elected for liquid crypto, but there are many reasons that they could have.

For instance, there's a significant tax

consequence for certain creditors, if they receive equity versus liquid cryptocurrency. That's disclosed in the disclosure statement and many creditors may have made their choice for that reason. It's not indicative of the equity value. Now, the Court doesn't need to look any further to see Mr. Phillips' true motive than his testimony that he would have not objected to the plan if he had been selected for a member of the new board.

Fiduciaries -- In conclusion, Your Honor, fiduciaries who act in good faith throughout the Chapter 11 cases and adeptly represent the interests of their constituents should not be subjected to a disgruntled individual's second guessing of their decisions. And to be clear, for so long as it exists prior to the effective date, the Committee will continue to uphold its fiduciary duty and evaluate whether the orderly winddown presents a superior recovery both economically or because of other issues.

Now, I want to touch on one point that Mr. Koenig raised at the end of his statements regarding the SEC approval process, and I think that Mr. Koenig did an incredible job of summarizing where we stand in that process for everybody. We have made and my clients have made it a priority to co-operate and encourage the Debtors to cooperate with government regulators. We view those entities as a key constituency in these Chapter 11 processes

and understood that we needed to work with the regulators to ensure that creditors and the investing public were protected and that justice was served.

Now, actions speak louder than words, and the Committee and the Debtors have demonstrated that commitment throughout these Chapter 11 cases. We engage in regular discussions with the state and federal regulators. We agreed to only distribute Bitcoin and Ethereum on account of the Earn and Borrow obligations. We -- the Debtors cooperated with investigations by the DOJ, the SEC, the CFTC, the FTC into the pre -- into their prepetition conduct which led to the entrance of consensual resolutions with all agencies.

The Debtors and the Committee agreed to include the language in the plan regarding exculpation that was appealed in the Voyager case. We have discussed and resolved issues regarding the proposed distribution agreements. We have delayed the equitable subordination trial so that the DOJ may proceed with its case in chief first and avoid any prejudice, and we reserved -- resolved all comments to the plan and the confirmation order with state and federal regulators.

I don't want to labor the point at what is required to exit Chapter 11, but I want to state that the Committee is focused on getting distributions out to

creditors as soon as possible and reducing the burden of these Chapter 11 cases. The Debtors in the Fahrenheit, for their point, have agreed. They echo that sentiment and they have committed not to hold up distributions if it's possible to go effective prior to the registration statement. However, that's not an easy feat.

There's a lot of hard work to be done before distributions can be made and other issues in how to structure the occurrence of the effective date, if that registration statement is not effective. Now, Mr. Koenig previewed this, but it may be necessary for us to come back before Your Honor for an additional motion in furtherance of confirmation so that those distributions can be made, but I want to make it clear.

The Committee is committed to and will push to get distributions out as soon as possible. The voting results speak for itself and it's time to move forward and out of Chapter 11.

THE COURT: Thank you, Mr. Colodny. All right, Ms. Cornell, are you going to do the --

MS. CORNELL: Good afternoon, Your Honor. Shara Cornell on behalf of the Office of the United States Trustee. We have heard from the Debtors and the Committee throughout these cases, and even today. These are complicated, unique cases of first impression. While this

is true, that does not mean that there aren't common or routine issues also. A lot of focus has been on how to get these unique cases to resolution, but the "usual issues" also exist in this case. Exculpation provisions in a plan of reorganization are still just as important as are consensual and affirmative third-party releases.

The United States Trustee started his review of the plan with a long list of issues with the proposed exculpation and release provisions, and after many discussions with the Debtors, I'm pleased to report to the Court that the Debtors have accepted many of our requested revisions so that we are able to narrow the outstanding issues before the Court this afternoon.

However, I would like to first quickly describe some of those changes that we believe have vastly improved the plan. First, the Debtors have removed two entities that are not yet in existence from the exculpation provision. The plan administrator and the litigation administrator have been removed. However, as we'll get to later, NewCo is still receiving the full benefits of the exculpation provision.

The Debtors have added a defined temporal scope to the escalation that limits all exculpation to actions from the petition date through the effective date only, and while Aegean is not binding on this Court, it is instructive and

the Debtors have also limited the actions to be exculpated to those more in line with the Aegean standard. These changes will help remove ambiguity and confusion for any party down the line trying to assess whether or not they're barred from further litigation.

The Debtors have also provided more information regarding who the exculpated parties are. There is now a reference as to which members of Ad Hoc Groups will be included for referring to the filing of 2019 statements by a certain date. The Debtors have also provided a list of exculpated current and former employees, again helping to eliminate ambiguity and confusion down the line.

Members of the board will also be identified and footnotes to relevant documents in this case that will definitively identify exculpated parties have also been added throughout the provision. And with respect to the EIP or the emergence incentive plan that Mr. Koenig discussed earlier, I just wanted to add that the Debtors -- I wanted to add to the Debtors' presentation that these awards are not mandatory and that even if the benchmarks are met, they're still discretionary and the revised documents reflect this negotiation between the United States Trustee and the Debtors, and I believe that's a very important nuance to mention for the Court.

With all of this said, we could not agree on

everything. The BRIC is still an exculpated party despite not being a retained professional and merely serving as a backup bidder. The BRIC have not been involved since the beginning of this case and are not entitled to the same exculpation as retained professionals and their exculpation should either be qualified to the extent they worked on the backup bid or they should be removed.

There's also limited information regarding PayPal and Coinbase, both of whom are serving as distributing agents in these cases. The exculpation currently provides for exculpation for affiliates, but there's no way for parties to know who these parties are. The United States Trustee has requested that a supplement be filed prior to the plan going effective, identifying what entity is actually doing the distributions so that exculpation can be limited to parties that are actually doing the work and so that any future litigants can easily ascertain who has been exculpated. Additionally --

THE COURT: I just want --

MS. CORNELL: I'm sorry.

THE COURT: -- understand. Those last comments with respect to affiliates of PayPal and --

MS. CORNELL: And Coinbase.

THE COURT: -- and Coinbase. Okay.

MS. CORNELL: Thank you. Additionally, as alluded

to earlier, the Debtors did remove both the plan administrator and the litigation administrator two post-effective created entities from the exculpated parties list. However, NewCo, also an entity not yet in existence, that will not be in existence until emergence, is still included as an exculpated party. Because NewCo does not and cannot exist prior to the temporal scope of the exculpation provision, it should be removed.

I'm also pleased to report to the Court that after lengthy and protracted discussions with the Committee, we've agreed to language regarding the makeup of the Litigation Oversight Committee as well as an appropriate carveout for the Committee's professional exculpation. The exculpation carveout will apply to both the United States Trustee as well as to all parties in interest and it will carveout any reliance of Committee professionals on knowing, in this case known or should have known, ultra vires actions of a purported Committee member. And upon recent information from various litigants --

THE COURT: Do I understand, did you say that the U.S. Trustee is going to be exculpated?

MS. CORNELL: No. No, Your Honor. What I said was the exculpation will carve out the rights of the United States Trustee and all parties in interest. I'm sorry.

THE COURT: All right.

MS. CORNELL: Upon recent information from various litigants received last week and the raw data received from the voting tabulation also received just last Thursday by the United States Trustee, it became clear that certain creditors that had opted into the Custody settlement back in May and then in turn voting on the plan, attempted to opt out of the third-party releases. Although their vote was a yes for the plan, that in turn made their --

THE COURT: And the disclosure statement said, you vote in favor of the plan and you accept it.

MS. CORNELL: Absolutely, Your Honor. However, the Debtors understood our concerns regarding knowing and affirmative consent with the plan and the releases not having been drafted at the time of the Custody settlement and they've agreed to honor those valid -- honor those otherwise invalid optouts for those Custody settlement users. And that --

THE COURT: How many of those are there?

MS. CORNELL: There are 20, Your Honor.

THE COURT: Is that reflected in the revised order that's been submitted?

MS. CORNELL: It should be, Your Honor. Was it filed this morning?

MAN: Yes.

MS. CORNELL: Yes, I believe it's in the one that

was filed this morning.

THE COURT: All right.

MS. CORNELL: So these individuals will have their optouts for releases validated.

There is one other issue regarding the optouts of the third-party releases. While the provisions of the plan may be clear to bankruptcy attorneys, that's not what is always clear to others reading the plan. Here, the raw voting data shows that thousands of creditors that voted in favor of the plan also attempted to opt out of the third-party releases, despite their vote in favor of the plan and despite the plan's instructions, and we wanted to make sure Your Honor understood that there was confusion and that while this was clear to bankruptcy lawyers, it may not have been as clear for others.

And we're given to understand that there were thousands, possibly as many as 5,000 creditors, that did try to vote in favor of the plan and also opt out of the releases. These variables were not clearly identified earlier, but we felt as though the Court should be made aware of this because it does involve a significant number of creditors that were clearly confused.

To circle back for Your Honor, our outstanding issues as we see them today, one, Coinbase and PayPal should have any affiliate identified in order to receive

exculpation. Two --

THE COURT: Let me just --

MS. CORNELL: Sure.

THE COURT: I want to be sure I'm understanding --

MS. CORNELL: Absolutely.

THE COURT: -- that. Is it acceptable to the U.S. Trustee if the affiliates of PayPal and Coinbase are specifically identified by name? I'm not sure when that --

MS. CORNELL: Yes, Your Honor.

THE COURT: -- before the distributions?

MS. CORNELL: Yes, Your Honor. That would be acceptable. We just want to know who is -- included in this exculpation.

THE COURT: Mr. Koenig, is that a problem? I mean, by then, you know.

MR. KOENIG: Your Honor, Chris Koenig, Kirkland & Ellis for the Debtors. We've talked -- we've been talking throughout --

THE COURT: I know, but I'm --

MR. KOENIG: -- the process. We've been talking to PayPal and Coinbase. They're super critical to our ability to get distributions out --

THE COURT: I understand.

MR. KOENIG: They are understandably concerned. They want to make sure that they have the full protection of

exculpation. I mean, my view is --

THE COURT: Let them provide the list.

MR. KOENIG: I've been talking to them about --

THE COURT: I don't consider it to be unreasonable.

MR. KOENIG: We will continue our discussions with them. We will continue our --

THE COURT: I may order it.

MR. KOENIG: And I'll speak to them, but they're so important to our process that --

THE COURT: I understand.

MR. KOENIG: -- tried to facilitate this because they are --

THE COURT: I mean, it's consistent with the -- wanting the Debtors to identify the releasees by name. There were certainly -- there were categories, but is it possible to identify them by name? I find it hard to believe that it's unreasonable to expect PayPal and Coinbase, if you tell us the names, they're going to get exculpated.

MR. KOENIG: We will continue our discussions with them. What I would say is I'd like for certain the deadline should be closer to the effective date or even after the effective date because we just don't know today --

THE COURT: I understand.

MR. KOENIG: -- these are going to --

THE COURT: I'm just trying to -- I want to make sure I understand what these issues --

MR. KOENIG: Thank you, Your Honor.

THE COURT: Okay. The next issue that I wrote down was NewCo listed as an exculpated party.

MS. CORNELL: Yes, that NewCo should not -- should be excluded from --

THE COURT: You want to --

MS. CORNELL: -- the exculpation provision as it is not in existence during the relevant time period. And number three, that BRIC's exculpation should be qualified to only work done on the backup bid or not exculpated at all.

THE COURT: That -- let me push back on that.

MS. CORNELL: Yeah.

THE COURT: So I -- obviously, I was not intimate -- I certainly knew about the discussions with BRIC, but I don't know, you know, all the steps in the negotiation that ultimately led them to be the backup bidder, and why is it unreasonable to exculpate BRIC? Is there something that you believe that they did that should disentitle them to an exculpation? The problem I have is that I want releases and exculpation as clear as it can be so you don't get into litigation about who's covered by it. To narrow -- come up with the description of what conduct it is that they're --

did they exist on the scene until they were part of a negotiation to be a bidder or a backup bidder?

MS. CORNELL: That's fair, Your Honor. I think a lot of it does have to do with the fact that we aren't quite clear about what they have been doing throughout the case other than serving as a backup bidder. So your question is, why should they be exculpated for the whole case. To our information and knowledge, what they've done so far is just serve as the backup bidder and nothing else. So their exculpation should be limited to any of that and nothing --

THE COURT: Well, that's what they wound up as.

MS. CORNELL: That's what they wound up as.

THE COURT: I understand --

MS. CORNELL: Yes.

THE COURT: But the problem I have, Ms. Cornell, when the case is going on and you get parties, either they're actually, you know, they're a potential bidder or you get them into negotiation, are they -- are people going to want to get involved in negotiation during the course of the case if somebody's going to turn around and sue them after? It's very easy to file a lawsuit.

MS. CORNELL: Right. That's fair.

THE COURT: That's my problem.

MS. CORNELL: That's fair, Your Honor; however, the exculpation could be limited to just the work that they

did in preparing and serving as a backup bidder. They would still be exculpated for that work, but they need not be exculpated for everything thereafter or before that. Why do they need the same exculpation as Kirkland & Ellis or White & Case that have been here since the very beginning --

THE COURT: All right, I have your point.

MS. CORNELL: -- and have been here until the very end?

THE COURT: This one I don't think you're getting a lot of traction.

MS. CORNELL: That's all right, Your Honor.

THE COURT: Okay. Are there other -- just, were there other open points? Because you sort of went through some things that --

MS. CORNELL: Just one more.

THE COURT: -- you agreed with the Debtor or were able to work out. I want to make sure, what's an open issue.

MS. CORNELL: You know what, just those three. And I think Your Honor --

THE COURT: NewCo, exculpation of affiliated parties of PayPal and Coinbase, and BRIC.

MS. CORNELL: Mm hmm.

THE COURT: Those three. Okay.

MS. CORNELL: So I think Your Honor will agree

that the efforts of the Debtors to narrow the scope of our objection today has made these proceedings much smoother. I want to personally express my own appreciation for the long phone calls and emails with both the Committee and with the Debtors in this case. It's definitely been a long journey.

THE COURT: Okay. Thank you very much.

MR. COLODNY: Your Honor, I have one clarification to Ms. Cornell's comments.

THE COURT: Yeah, go ahead, Mr. Colodny.

MR. COLODNY: So Ms. Cornell --

MS. CORNELL: Sorry.

MR. COLODNY: Aaron Colodny from the Committee on behalf of -- Aaron Colodny from White & Case on behalf of the Official Committee. This is much nicer than when you make me stand next to Mr. Koenig.

MS. CORNELL: I was just thinking the same thing.

MR. COLODNY: Doesn't look great. Ms. Cornell referred to the exculpation as a carveout. It is not a carveout to the exculpation. It's a reservation of rights for arguments that may be made. To fall -- or the exculpation as I said in my report is a statutory grant to fiduciaries, and so anyone asserting that White & Case -- that causes of action against my firm while outside of that would have to either prove that we are acting ultra vires-ly or we committed bad faith, gross misconduct, the litany of

lists that are carved out in the exculpation.

THE COURT: Let me say, historically, exculpation was intended for estate fiduciaries, whether that was the Debtor or professionals and, you know, Debtors' counsel, the people the Debtor would work with, the Committee. My view is that exculpation has largely been accepted broader than that for parties who are engaged in good faith in negotiating a plan and all things attendant to it.

So I go back. I don't have it in front of me, but you know, if you read Judge Wiles' comments in the Voyager case, I very much share his views that we don't want people to be able to turn around and sue people who were -- maybe creditors who in good faith for a result. They're not estate fiduciaries, but they're participating in the plan process in good faith in an effort to reach a consensual plan.

If they're facing the threat of lawsuits by other disgruntled creditors who don't agree with what they did, it makes it very hard to achieve a consensual result. For those reasons, I think what historically may have been viewed as exculpation just for estate fiduciaries has extended beyond that to other active participants in the plan process. We may not agree with that, but I mean, that's what I think, where the law has moved.

Mr. Colodny, where you're -- you know, your firm

and the Creditors Committee, estate fiduciaries. That's the classic case for exculpation.

MR. COLODNY: Thank you, Your Honor.

MS. CORNELL: If it would be easier for Your Honor, for me to --

THE COURT: Why don't you move --

MS. CORNELL: Sure. If it would be easier, I can read the provision into the record that you have more context at this point.

THE COURT: Sure.

MS. CORNELL: If that's -- that's just easier and makes it --

THE COURT: This is your -- you're reading now what? What was agreed or --

MS. CORNELL: This would be as it relates to exculpation for the Committee professionals, the reservation of rights that Mr. Colodny just alluded to.

THE COURT: Okay.

MS. CORNELL: If that makes it easier.

THE COURT: Yeah, go ahead.

MS. CORNELL: So we've come to an agreement on this. We haven't signed anything or dotted any I's, but we're in agreement on this language.

THE COURT: -- back you on that.

MS. CORNELL: "All rights are reserved for the

U.S. Trustee or any party in interest to argue that any Committee professional acted in knowing reliance on any excluded Committee member. All rights and defenses are reserved for any Committee professional with respect to any argument by the U.S. Trustee or any party in interest that such professional acted in knowing reliance on an excluded Committee member that acted in ultra vires manner. For the avoidance of doubt, knowing in this context means knew or should have known."

Do you have any other questions for me, Your Honor?

THE COURT: I don't.

MS. CORNELL: Thank you very much.

THE COURT: All right. Does anybody want to be heard from the Ad Hoc Borrowers Group?

MR. ADLER: Good afternoon, Your Honor. David Adler from McCarter and English on behalf of the Retail Borrower Ad Hoc Group. I'll be brief.

First, I wish to extend my appreciation to the Debtors and the Committee for the hard work that they've done throughout this case and especially throughout the month of October. It's been a very long month for me. I'm sure it's been a very, very long month for them.

Second, obviously the Retail Borrower Ad Hoc Group is a settling party. We've entered into an agreement that's

embodied in the plan pursuant to which the borrowers who consented to it have agreed to be treated in a certain way under the plan.

We raised three issues in response to the proposed findings of fact and conclusions of law, the confirmation order that was filed a week ago last Friday, and I'm pleased to report that I think two of them are resolved. The first one is, as I noted at the beginning of the confirmation hearing, that the Retail Borrower Advance Obligation Repayment Election had not been included on the ballot and the Debtors changed -- modified the plan to note that it would be included in the repayment notice that is sent to the borrowers.

But still there are issues about timing about the repayment, so I proposed language in my objection which is ECF 3928 and in the eighth plan supplement that was filed today. Mr. Koenig gave me a nice lesson in speed reading. I believe it's Paragraph 323 which is on Page 338 of 365, where he essentially acknowledges that the Debtors will continue to engage commercially reasonable efforts to deal with these issues that might come up in the future regarding the repayment. So I think that paragraph addresses that.

MR. KOENIG: And sorry, Mr. Adler. That's the confirmation order. Just for the record, that's the confirmation order that you're reading from not the plan

supplement. Just -- I wanted to make sure that --

MR. ADLER: You're correct. That was the --

MR. KOENIG: Sorry for interrupting.

MR. ADLER: No, he's -- Mr. Koenig is absolutely correct. That is the modified confirmation order. That was filed at 10:59 today.

THE COURT: What's the issue that's not resolved?

MR. ADLER: It was resolved.

THE COURT: I thought you said there were three issues --

MR. ADLER: Well, that's -- I'm dealing with first, the first one.

THE COURT: Yeah, I wanted to get the -- go ahead.

MR. ADLER: All right, I'll breeze through it, Your Honor. Second one is the litigation or the plan administrator agreement. There was an issue about the power of the Plan Oversight Committee. We raised that in an objection on Friday or in our response, I should say. That was addressed in the plan supplement today on Page 55 which is ECF 3935. And it essentially defaulted back to what was in an earlier plan supplement with a little bit of clarifying language.

What is not resolved, Your Honor, the third issue is, I guess it's Paragraph 269. We --

THE COURT: Paragraph 269 of the confirmation?

MR. ADLER: The confirmation order, which is where we had asked the Court. There are a handful of borrowers who objected and we don't really believe that it's necessary for the Court to make the determination on the ownership of the collateral with respect to all borrowers, and we think the Court need only deal with the borrowers who objected to the plan, and not all borrowers. And that issue still remains the same in the modified confirmation order that was filed today and we think that the Court does not need to address the issue for all borrowers. We would just suggest that it be dealt with for the objecting borrowers.

THE COURT: I'm at a little bit of a loss because if I determine the ownership, why is it different for the objecting Borrowers from anyone else? I mean, the language is the language.

MR. ADLER: But if Your Honor issues a ruling, the borrowers, my group, has not put in any documents or any argument with respect to why ownership belongs to the borrowers rather than to the estate. And to the extent -- it's not going to come up here, but to the extent that there becomes an issue later on with respect to facts implications on transfer of ownership, that is the concern.

Does that make sense, Your Honor?

THE COURT: I understand the tax issues, unresolved tax issues if there's been transfer of ownership

and they received -- what those potential issues are. Obviously I'm not being asked and I'm not resolving any tax issues.

Mr. Koenig, what's the position with that?

MR. KOENIG: Your Honor, again, Chris Koenig, Kirkland Ellis, for the Debtors. This is not our issue. The reason we did not include it in the confirmation order is the same reason that Your Honor identified. We were perplexed as to how Your Honor could make a ruling to some borrowers and not to others, but it's not really for us to decide. If Your Honor is comfortable, we're not going to stand in the way. But that was the reason why we didn't include it in the first instance. We thought it was a decision for Your Honor to make.

THE COURT: Mr. Adler, do you have proposed language that -- first I would say generally I don't like to decide more than I need to decide. Have you proposed specific language that named the specific borrowers as to which the ownership issue would be addressed in the order?

MR. ADLER: I think we proposed language in ECF3928 that just said that Court was making a determination only with respect to the objecting borrowers. Alternatively, I would suggest that if the Court deems it necessary to use the phrase "accountholders" or "borrowers", that there be a sentence that says nothing in this decision

or order shall have any --

THE COURT: I will look at the issue. I'm not committing one way or the other. I will look at the issue. Okay?

MR. ADLER: Okay. Those were my three issues, Your Honor. Like I said --

THE COURT: Well, two of them resolved and one we're talking about now.

MR. ADLER: Correct.

THE COURT: Okay. Thank you, Mr. Adler.

MR. ADLER: Thank you, Your Honor.

THE COURT: Okay.

MR. KOENIG: Your Honor, just real quickly, this is not our issue, but if Your Honor is looking for a way to try to satisfy Mr. Adler, I think one way that you could perhaps do it is best interest test is something you're going to need to decide with respect to anybody that's did not affirmatively support the plan. I think if the borrowers owned the collateral, the plan would likely fail best interest. What you could do, as opposed to saying you're only deciding for the objectors, I suppose you could say you're only deciding it with respect to anybody that did not affirmatively vote to support the plan because Section 1129(a)(7) says that. I think that could be a way through this if that's something -- if you're trying to satisfy Mr.

Adler but also make sure that you're making the rulings necessary for confirmation. I think that that would get Mr. Adler what he wants and maybe satisfy Your Honor. But that's a middle ground and you're not deciding more than you have to.

THE COURT: I guess what I would ask maybe the two of you, or Mr. Adler, if you would file one more piece of paper on the docket indicating essentially what Mr. Koenig just said. Okay?

MR. KOENIG: We're comfortable with whatever Your Honor is comfortable with. And that might be a way through it. So I just wanted to...

THE COURT: All right. Thanks very much.

MR. ADLER: And we will do so, Your Honor. Thank you.

THE COURT: Next is the Ad Hoc Earn account.

MS. KUHNS: Good afternoon, Your Honor. Joyce Kuhns, Offit Kurman, for the Ad Hoc Earn Accountholders.

On behalf of the Earn Ad Hoc Group, we would like to commend the Debtor, its management, and its professionals and the Committee and its professionals for running an extremely efficient five-day confirmation process in a very complex case assisted by court protocols that has demonstrated we believe compliance with all the requirements needed to confirm the plan before you.

As we observed in the Ad Hoc Earn groups opening, not everyone got everything they wanted here. But everyone was given an opportunity to be heard in this courtroom whether in person or via Zoom, which was greatly appreciated, Your Honor.

Since this may be the last opportunity for the Ad Hoc to be heard by the larger creditor constituency, we would like to clarify what its role has been and what some of its members will continue to do to promote creditor interest going forward.

The Ad Hoc Earn group consists of creditors who, like all creditors, were the targets of a massive fraud and suffered significant losses as a result. They regrouped and in fact contributed additional dollars, critical dollars to form a group committed to building consensus on the way to achieve the best outcome for Earn accountholders as quickly as possible while respecting the position of other creditors.

I would like to once again thank in particular the steering committee members, Immanuel Herrmann, Brett Perry, Nick Farr, and Joe Lehrfeld.

The Ad Hoc Earn group believes that the $2.5 billion it claims voting in favor of the plan is a testament to their efforts and the efforts of others to productively engage with each other and work cooperatively towards the

exit. It is significant that the Ad Hoc's sightline did not end with the exit but extended to what would happen afterwards to enhance recoveries to creditors and future equity holders through Newco and the litigation oversight committee namely by creditors assuming a seat at the table of each.

There has been some criticism of the board selection process. We believe the testimony of Major Robinson was credible and thorough regarding how NewCo board selections occurred, a process in which a number of Ad Hoc Earn members participated as interviewees.

While we were not successful in security voting seats on the NewCo initial board and admittedly were disappointed in that, there will be three Earn creditors participating in NewCo board meetings as board observers along with the two co-chairs of the committee who will have voting rights.

The board observers are each significant Celsius creditors. They will each have access to the same information as all board members. While the board observers may not have a vote, they have a voice and the ability to influence outcomes. And each in fact has been a positive influencer in this case. The Ad Hoc is grateful that these creditors have again stepped up to further the goal of working to maximize recoveries.

With respect to the NewCo board, it is important to further note that a public board must not only have members who are diverse in skillsets, gender, race, and ethnicity -- in particular to satisfy NASDAQ requirements -- but who are committed to work together as a group to advance the company and enhance returns to equity.

We are pleased to say that there already exist solid working relationships and mutual respect among the creditor representatives to this board, a critical and promising starting point. The Earn Ad Hoc and Earn Borrow groups will each have a representative and therefore a voice to speak for Celsius creditors and former accountholders on the Litigation Oversight Committee as well. The long and the short, Your Honor, is that the work does not end here, but another phase will begin after the effective date with our constituents' continued representation in the recovery process.

Your Honor, we have listened in throughout this confirmation hearing and are hopeful and in fact anticipate after much hard work and the dedication of many that a confirmation order will enter soon. And we will then be looking forward to a prompt exit and the long-awaited commencement of distributions which we hope will occur this year, but if not, as soon as possible in 2024.

Thank you for your time, Your Honor.

THE COURT: Thank you very much,. All right. Next is the Withhold Ad Hoc Group. I think Ms. Kovsky-Apap indicated that she withdrew her request, which I appreciated.

Next is the Securities and Exchange Commission.

MS. SCHEUR: Good afternoon, Your Honor. Therese Scheur for the U.S. Securities and Exchange Commission.

THE COURT: Good afternoon.

MS. SCHEUR: With me on the line is William Uptegrove, also from the U.S. Securities and Exchange Commission.

Your Honor, the SEC filed a limited objection and reservation of rights at Docket 3522. The Debtors have incorporated changes to respond to the issues raised in our informal comments and limited objection. The SEC continues to reserve its rights to object to any winddown motion if one is filed. And as stated in our reservation, the SEC is not opining as to the legality under the federal securities laws of the transactions outlined in the plan.

Your Honor, with respect to the status of the Form 10, as Mr. Koenig noted, the Debtors have sought pre-clearance to file the Form 10. I'm not a part of the pre-clearance process and therefore am not able to confirm the Debtor's discussions with other staff or the descriptions of those discussions. But my understanding is that the pre-

clearance process remains ongoing.

If the Debtors obtain pre-clearance, they would then file a Form 10 which would be reviewed by the court fin staff before it could become effective, and this process could take several months. Thank you, Your Honor.

THE COURT: I guess my only request -- and only a request -- is that the staff do all it can to facilitate this process going forward. The SEC will make the determination it believes required in the facts and circumstances. All I'm asking is -- and I think the Debtors and the Committee certainly from the Court's standpoint have been doing all it can to facilitate speedy process. I would appreciate it if the SEC would do likewise. The SEC will make whatever decision it believes is the correct one. I just hope the process will move forward. So if there are any bumps in the road, we can try to work those out along the way. I appreciate it.

MS. SCHEUR: Understood, Your Honor. We can take that back. Thank you.

THE COURT: Thank you very much.

All right, Mr. Frishberg is next.

MR. FRISHBERG: Thank you, Your Honor. As we all can agree, this case has been very long and complex. Numerous creditors have raised various issues and various complaints about the plan. But the matter of the fact is

the plan is the best one we have at this point in time. A year ago, an orderly winddown would have been better, but we have come too far and spent way too much money to do anything other than push through with this NewCo as fast as humanly possible. It may be a bitter pill to swallow for some creditors, and there are a few ways to make it a bit less bitter. I will suggest them later.

The main one is that we ensure that NewCo location trust does not have anyone who worked at Celsius employed there, whether that be the janitor or all the way up to the top. The creditors were promised a new company with completely new management, and we will hopefully have that. I do not want anyone who was at Celsius -- and that goes all the way up to Mr. Ferrara, although he has done a great job in this bankruptcy thus far.

I would like to thank everyone that has helped make this plan as well as made this a relatively smooth bankruptcy and get us (indiscernible) professionals, the U.S. Trustee, Your Honor, and everyone else.

I would also like to specifically thank the attorneys from Offit Kurman, Joyce Kuhns and Jason Nagi, who gave Earn a (indiscernible). Without them, Earn would be in a different position (indiscernible).

This plan, while it's not perfect, it's the plan we have. We need to get out of bankruptcy as soon as

possible before any more assets are dissipated. Your Honor should approve this plan with or without the suggestions I made.

Let's see. (indiscernible) carveouts from (indiscernible) carveouts (indiscernible) the parties would likely smooth the process of exiting bankruptcy, but further makes it a bit less of a bitter pill to swallow.

We must exit Chapter 11 and we must stop (indiscernible). We have to exit as fast as humanly possible, and that is why Your Honor should wait the mandatory 14-day stay period for appeals. I support the plan being approved, and I would like to reserve the rest of my time for rebuttal if possible.

THE COURT: I'm sorry, Mr. Frishberg. The only parties who are getting rebuttal are the Debtor and the Committee.

MR. FRISHBERG: Okay.

THE COURT: I think I made that clear. So if you want to use the rest of your time, be my guest.

MR. FRISHBERG: It's fine. Thank you, Your Honor. The plan should be approved as soon as possible. Have a good day.

THE COURT: All right. Thank you.

Mr. Sabin, I think you are next.

MR. SABIN: Good afternoon, Your Honor. Jeff

Sabin of Venable, counsel for Ignat Tuganov, one of the three class claim representatives in this case, a party to the plan support agreement, a participating in the plan mediation, and Earn Rewards only customer and still today would be a member of the Litigation Oversight Committee.

Mr. Tuganov and I believe it is now time for this Court, as you have done throughout these cases, first to carefully consider the voluminous record including the five days of confirmation hearings, testimony, argument, admitted evidence, and all pleadings related thereto as presented and advanced and argued on all sides by the Debtors, the Committee, the plan supporters, plan objectors, interested regulators, and most importantly articulated by numerous pro se creditors.

And then after you so consider it, we believe you should confirm the plan. It is the very first to my knowledge reorganization of a cryptocurrency business and would otherwise permit, subject to satisfaction of certain conditions, the occurrence of an effective date so that customers, hundreds of thousands of them, and other creditors, can begin to receive the contemplated distributions of bitcoin, Eth, NewCo common stock, and potentially net recoveries from retained causes of action.

Stated simply, Your Honor, the process and procedures experienced to arrive here today have been

challenging to say the least. And I highlight five particular indicia of those factors.

One, the sheer number of customers and creditors and the uniqueness of their claims and the use and consequences of today's instant communication vehicles that otherwise at times cause confusion, at times cause perhaps misunderstandings of fact. But we cannot otherwise stop what is in today's world.

The second factor, the uniqueness of legal issues created by the Debtor's prepetition business lines and agreements.

The third, the lack of any clear regulatory principles, rules, or decisions regarding the Debtor's services and the various digital assets used therein and the potential effect of those issues on customer claims in the structure of this plan.

Fourth, the need for findings or understanding of what, when, and how the Debtors arrived in this case almost 15 months ago and the important role that the examiner, the UCC, the Debtors, and others played in helping creditors understand the unfortunate circumstances that led us here. And more importantly, the potential the way the plan is structured to preserve claims not only for the creditor body, but for the regulators to otherwise do their job.

The fifth, the importance of various settlements

leading to and/or embodied in the proposed plan and the various respective best efforts of the Debtors, the Committee, and the various settling parties to achieve compromise and consensus so that distributions can hopefully begin soon and this case indeed can evidence equitable distribution to creditors.

Now that the focus of objectors and respondents has become clearer, as you have heard, there remain but a handful of issues of fact and/or relevant law to confirmations. Mr. Tuganov as a plan support party continues to work with the Debtors and the UCC to address and finalize some revisions that he previously delivered to the Debtor's counsel and, like Mr. Adler, I took that course in speedreading and I'm happy to say that I have read in full, Your Honor, the proposed revisions to the findings of fact and conclusions of law set forth in Docket 3937 and I am happy to say that almost all of Mr. Tuganov's suggested revisions to that document have been incorporated and included.

At this point, we are hopeful that the remaining issue with the retail borrowers can be resolved consensually. I only point out that besides best interest, also relevant to that language for consideration might be the effect of any fact-finding regarding title to collateral on the preference exposure and the way it's dealt with under

the plan.

In any event, Your Honor, many thanks to the various federal and state regulators for resolving their respective claims by effectively subordinating billions of dollars of allowed claims to permit distributions to creditors pursuant to the plan. And two, by permitting the distributions of more than $2 billion of Bitcoin and Eth. Hopefully soon the distribution of new common stock in a public reporting company which will have as its business cryptocurrency mining and the staking of eth. The creditors can only hope and expect that if indeed this Court confirms the plan and that soon thereafter an effective date will occur, that distributions can flow, whether it's before the end of this year or early in 2024.

Finally, as others have done, I wish to say special thanks to the Debtor's management team, to the special committees, and most importantly, to the lead counsels for the Debtors and the UCC and their respective team members for their tireless efforts to get us to this point today. Thank you, Your Honor.

THE COURT: Thank you very much, Mr. Sabin.

All right, Mr. Herrmann. Just so everybody knows, Immanuel Herrmann is next. Then we're going to take a ten-minute break and then we will resume.

Mr. Herrmann?

MR. HERRMANN: Thank you. Good afternoon, Your Honor. Immanuel Herrmann, pro se. I am speaking today in support of the confirmation of the Chapter 11 plan before this Court. It's been a long road to get here and I wanted to mention a few highlights of the case that I believe made a big difference in getting where we are today.

First, the examiner's report. Earlier in the case, there were concerns that what happened with customers' deposits would be brushed under the rug and in particular to the detriment of customers like me and other Earn (indiscernible).

The Court wisely agreed with pro se Earn creditors David Adler and other objectors at the time informed the examiner to increase the scope of her report. Doing so allowed phase two of the examiner's report to take place. And this portion of the report made a huge difference in getting us further.

Second, the formation of the Earn Ad Hoc. I would like to thank my fellow steering committee members Brett Perry who went to mediation with me in New York, Nick Farr, Joe Lehrfeld, along with other members of the Ad Hoc. And of course Joyce Kuhns and Jason Nagi, our amazing counsel at Offit Kurman.

Third, the class claims process, which is kudos to the UCC for coming up with that, which resolves the

bellwether litigation which was a huge step forward with the case.

I know firsthand as a potential bellwether claimant just how crazy that litigation would have been, and it was welcome to -- it was great that we had a process to resolve that.

Many of these issues, including substantive consolidation as well, were all resolved through the mediation which took place in New York. Here, the formation of the Earn Ad Hoc was absolutely essential to that mediation occurring, which brought us to where we are today.

In the months before mediation, the case seemed quite set. It seemed that Earn customers such as myself might get just pennies on the dollar, meaning that the largest creditor group might oppose the plan and that it could resolve in a contested plan with a huge amount of litigation. But fortunately we were able to resolve these issues (indiscernible) and here we have before the Court a plan that has overwhelming support from all the major creditor classes.

In mediation we got what I believe is rough justice for Earn subject to the limit of bankruptcy code. To get there, several of us put our own interests aside for the greater good. It was a huge success and I would like to thank the UCC and the debtors for organizing that mediation

and for all the work they have done to get us --

THE COURT: And I want to thank Judge Wiles.

MR. HERRMANN: Judge Wiles was wonderful, yes. I also would like to thank him as well. Thank you, Your Honor.

We also -- yeah, so now that the votes are in, I think it's crystal clear a vast, vast majority of creditors support the treatment in the plan and support exiting Chapter 11 and moving on with our lives. The plan doesn't everyone happy. It has some frustrating elements, some things that have to do with the Bankruptcy Code, like dollarizing claims on the petition date, which is pretty terrible in a crypto context where prices keep rising.

But at the end of the day considering the Bankruptcy Code, it's roughly equitable and it contained shared sacrifice, which is what Earn customers fought for and what's fair.

There are of course outstanding little issues with the plan apart from the financial treatment of creditors. And I think the Court should consider a vote for the plan by creditors is really a vote for economic treatment in the plan.

There are some well-thought-out objections from other parties that have been raised here which I won't repeat except to say that I believe the Court should

seriously consider those objections and make the plan even better while preserving the treatment we all agreed to. But at the end of the day regardless of which changes are or are not made, the Court should move forward with confirmation of this plan and get us out of Chapter 11. Thank you very much.

THE COURT: Thank you, Mr. Herrmann. All right. We're going to take a break for ten minutes.

Mr. Phillips is up next. Mr. Phillips had filed slides as ECF3913 if you are able to tee those up. Okay? Ten-minute break. Thank you.

(Recess)

CLERK: All rise.

THE COURT: Please be seated. All right, we are back in session. We're going to begin with the closing argument of Mr. Phillips. Mr. Phillips?

MR. PHILILPS: Thank you, Your Honor. I appreciate the Court hearing me. So presenting from a PDF is a little hard, but Deanna, if you could advance it to at least the title page?

THE COURT: Mr. Lopez is one of the people in the courtroom who is from Kirkland who is operating the slides. Okay? But we are on to your first page.

MR. PHILILPS: Thank you very much, Your Honor.

THE COURT: Just so everybody is clear, this is

ECF 3913. Go ahead, Mr. Phillips.

MR. PHILILPS: Thank you. I appreciate the Court hearing me out on my limited objection. And I want to make clear that I don't stand in the way of plan confirmation. I just would like to see it modified to be more favorable to creditors.

Mr. Lopez, if you could go to the next slide, please. So since the disclosure statement order was issued in late August, there have been a number of changes to the plan that when taken individually weren't that bad, but when taken together did materially change the plan in an essential way that they were adverse to creditors.

The plan was advertised as a NewCo that was creditor-owned and creditor-controlled. Yet when the appointments were made to the NewCo board, there were no creditors appointed to the board other than the self-appointed UCC members. And also on the Litigation Oversight Committee, the only creditors who were appointed were the ad hocs and from the UCC itself. One of those appointments has now been reversed.

Importantly, the creditor controlled the board was reduced in the original plan from a ratio of two-and-a-half creditors appointees to Fahrenheit appointees. So only two creditor appointees to one. We saw the resignation of the lead investor, Michael Harrington of Fahrenheit from the

NewCo board and we saw this critical decrease in the investment upfront of support for the NewCo from $50 million to $33 million, which was detrimental to the NewCo equity value.

We saw the stripping of the Litigation Oversight Committee of key oversight (indiscernible). I understand potentially that this has been reserved in Plan Supplement 8 that was filed I guess today. Not sure. I haven't been able to read everything. I did not take the pre-law school course in speed reading, so I have yet to catch up on all of the documents. And that the plan administrator under the plan administration agreement I believe is Chris Ferrara, who -- and he is given oversight over the Employee Incentive Program, or the Emergence Incentive Program depending on which title you want to use. But he is also a 25 percent beneficiary of the entire pool. So the changes that have been made have been consistently to the detriment of the creditor. Next slide, please.

So there's a number of conflicted board appointments. And I think you heard Mr. Colodny say today that essentially they wanted all the appointments to these committees to be people that they knew, i.e. the professionals and were not necessarily in the best interest of creditors. They wanted people that were ex-employees of Weinberg, current employees of Perella Weinberg even if, you

know, one of those current employees has multiple outstanding tax judgements and liens and doesn't even qualify as an independent director because of his current employment with Perella Weinberg and on the Celsius matter.

We have partners of White & Case being appointed to the Litigation Oversight Committee to ensure that they can be hired. And again you have Mr. Ferrara overseeing a plan that he is a 25 percent beneficiary of.

The only really conflict people that were appointed were, you know, thanks to the ad hoc the Earn Ad Hoc and the Loans Ad Hoc where we did have three court-appointed observers. And I left off Simon Dixon's name here. Joe Lehrfeld, and Simon Dixon appointed. And on the Litigation Oversight Committee, David Adler and Cam Crews. Next slide, please.

So what's important here is how these actions were really viewed by creditors. As opposed to having a creditor-controlled company, we didn't get that. No unconflicted creditors on the board (indiscernible). And this was really important. I can't tell you how detrimental that was to the view of creditors of the NewCo equity. And it's not just me. I've talked to multiple creditors who saw that.

So instead of getting actual board members, we got pacifiers. We got a pacifier of three board observers who

were appointed with the consent of the Earn Ad Hoc who have no actual power. Yes, they are in the meeting, yes, they can get the materials. But what was failed to be mentioned by either Colodny or Ms. Kuhns is that they can be thrown out of any board meeting by a simple majority vote of the board, which is the same vote that it would take the board to take any action that they want, input, or observation from the board observers.

If was actually the appointment of one of these board observers, Simon Dixon, that led to the resignation of Michael Harrington from the board, which again, was a negative event that's going to be viewed negatively not just by creditors, but by the market as a whole.

And finally, that reducing the upfront investment from $50 million to $33 million, even if the overall investment is maintained at $50 million, reduces the available price support upon listing of the stock and thus does not give it the same kind of stability and leads to more likely a (indiscernible) stock. And with the cumulative event of these things was bad from the creditor's standpoint.

Also I need to point out that Mr. Colodny's closing slide was that wouldn't have actually filed my objection had I been appointed to the board. It's not just that I hadn't been appointed. If they appointed creditors

to the board, I wouldn't have filed it. And that's the whole point here is that if creditors had been appointed to the board, three out of four of these factors -- the no creditors on the board, the pacifier board observers, and the Michael Harrington resignation from the board -- they would not have occurred had creditors been appointed to the board by the committee under the advice of Perella and White & Case. Next slide, please.

So what happened after this occurred? Creditors ran from actually taking equity. So the Committee and Debtors have made a big point that, well, there's lesser reasons that people would have chosen liquid crypto. True. There are multiple reasons that people want liquid crypt. And that's another reason that they should want the orderly winddown because they get more liquid crypto from the orderly winddown. But more importantly what they haven't addressed, and it's borne out by the facts, is that nobody wants the NewCo equity even at a significantly-reduced price of 30 percent. There's only $178 million of claims which represent 14 percent of the people that toggle but it represents only seven percent of the people that were eligible to actually toggle to buying more equity at a substantial discount of 30 percent from the Debtor's claimed value of the equity (indiscernible). So it's clear that that matters (indiscernible).

Now I'm going to go and look at what happened here with the valuation. Go to the next slide, please.

We understand based on Mr. Keilty's testimony that an inappropriate process was used. If you go back to the days of internet companies and the dot-come era being valued, people used all sorts of strange metrics like number of unique clicks, eyeballs. And those were essentially proxies for revenue or future revenue. The same mistake was made here by Mr. Keilty and his team of scientists. They used a revenue proxy which was based on enterprise value (indiscernible) bitcoin mining compute (indiscernible). And that's basically a discredited valuation technique. They also used a discounted cashflow analysis and the forecasted supply to the company was wildly inaccurate in its predictions or even proven that way. The networks had a 450 hash rate as opposed to the 307 hash rate that was predicted in the forecast. And all these things were predicated on the May 31st valuation and circumstances have drastically changed since May 31st. The company hasn't met its operating plan, either.

There was no Holdco discount applied which is, you know, a minor point. But part of that $450 million that the debtor claim shouldn't be discounted and is not applied on a part-by-part basis, a Holdco discount is only applied at the total company level because that's when you have that sum of

the parts that needs to be discounted. But part of that $450 million is actually needed to capitalize the mining company, which is (indiscernible).

And then we finally had this first market test that I've just talked about. And that clearly demonstrated the overvaluation of the equity by at least 30 percent. The discount would have to be more than 30 percent. Next slide, please.

And so that leads us to the conclusion that the orderly winddown is a superior recovery, distributes more liquid crypto on the effective date. The Newco equity in the baseline plan is way overvalued by a minimum of 30 percent. And one of the key differences is the orderly winddown gives creditors what they want, which is a maximum liquid crypto recovery by releasing that additional $450 million in crypto that's being held back to secretly capitalize essentially the mining business because that's what (indiscernible) capitalize.

So in closing -- next slide, please -- get a higher liquid crypto recovery using an orderly winddown and that should be the fiduciary duty that is exercised by the Debtor and Celsius. The Court should order a revaluation of the two scenarios because they are way out of date given the May 31st valuation date. And clearly the market test needs to be included in that.

Professionals need to be held accountable here for their actions. And they've certainly done a great job and it's been a massive case. There have been a number of things that they've done extremely well. But that doesn't mean that everything should be excused and that there needs to be a carveout from the exculpation or the actions (indiscernible). And the (indiscernible) appointments of the board and the Litigation Oversight Committee should be reversed. Thank you so much for listening to me, Your Honor.

THE COURT: Thank you, Mr. Phillips. Thank you, Mr. Phillips.

Next is Otis Davis. Mr. Davis?

MR. DAVIS: The only thing I would say we had a big earthquake here this morning. We lost power. Power is back. We had a few aftershocks. I just had one 20 minutes ago. So if the Zoom goes out, I just want to let you know ahead of time we lost power again.

THE COURT: Okay. Go ahead, Mr. Davis.

MR. DAVIS: Your Honor, with all due respect, I sincerely do not believe that the plan as it currently exists is confirmable based on the disparate price of the binding and court-approved 81 cents for cell token in custody versus a (indiscernible) in Earn.

I want to talk about the binding custody

settlement agreement right now. I have 34,867 CEL tokens in my custody account and 1.6 million CEL tokens in my Earn account. The day the Debtors and the UCC agreed to a CEL token custody settlement at Docket 2271 is the day all CEL token holders tog 81 cents, which Your Honor ratified with a signature which date is February 28th, 2023.

The custody settlement has a fixed the CEL token price for custody holders at 81 cents regardless if they are in custody or Earn. Because of this and this along, all CEL token holders are entitled to get the petition date price of 81 cents as their valuation. The UCC, this Court, and the Debtors are legally estopped from asserting or attempting to undo this so-ordered and court-approved valuation of the CEL token. Anything else is contrary to the rule of law, not equitable, and is not supported by any facts, claims, or arguments. As an aside, I would also note that the Custody Ad Hoc Group did not file to support confirmation of the plan.

Moving on to the Debtor's $2 billion claim against FTX et al., the Court cannot ignore the fact that the Debtors have officially filed a $2 billion claim FTX bankruptcy against Alameda Research and FTX, et al. for attaching Celsius with CEL token. In that filing, the Debtors themselves are claiming that CEL token is valued at $2.88. This Court cannot ignore those legally-sworn

assertion in another pending case in this bankruptcy court. The Debtors and their lawyers are ordering on perjury to claim one value in the FTX case and are pushing another in this matter. Self-serving and perjurious would be (indiscernible) for their conduct which would not be unnoticed. The Debtors arrived at the $2.88 value by taking the total number of CEL tokens in circulation which as 693 million, and multiplying by $2.88 which gives you the $2 billion claim number the Debtors filed in the FTX bankruptcy. Your Honor, this $2 billion claim the Debtors filed in the FTX bankruptcy against FTX et al. undercuts their entire argument in this matter and should subject counsel to sanctions and costs. The basis of the $2 billion claim is damaging related to CEL token yet it's embarrassing to see the UCC and the Debtors are actively trying to devalue the very asset that can bring so much recovery to all creditors. The $2 billion claim against FTX will remain with the estate post-confirmation but cutting recovery for CEL token creditors will equate to an inequitable distribution of value of this claim which relies 100 percent of the value of CEL token. This cannot and will not be allowed.

Moving on to Max Galka report and the supplemental declaration. Objectively speaking, the Max Galka report should be thrown out on its face. Mr. Galka's company,

Elementus, took over $200,000 from Alameda Research who the Debtors are currently suing as part of the aforementioned $2 billion claim. Does that count into this amount? Clearly yes. Mr. Galka and his company also have another vested interest in devaluating Celsius' claims. One of the three board members of Elementus, Vladimir Jelisavcic, who founded and is currently the CEO of Cherokee Acquisition, has been purchasing hundreds of millions of dollars' worth of claims in this case assisted by the devaluation efforts of Elementus and Galka. Mr. Galka and his reports are the definition of a conflict of interest and anything that he said should have no bearing on the value of CEL token. And investigations should be commenced against the company and the law and the law firm who pushed Galka on this Court. A refund should also be given to the estate for the waste of -- for the $1,000 an hour paid to Galka and Elementus.

Moving on to speculative versus utility value for cryptocurrencies. Your Honor, cryptocurrency valuation is a complex amalgamation of various factors with utility value being just one of the components. The digital currency ecosystem showcases a plethora of coins and tokens, the majority of which by traditional standards lack tangible, intrinsic value. Despite this, many have achieved significant market capitalizations and have become cornerstones of the cryptocurrency world. Bitcoin is

commonly dubbed the gold standard of cryptocurrency of the cryptocurrency world. Bitcoin stands as a testament to the limited role of intrinsic value and digital currency valuation. Bitcoin by its very design has no utility, doesn't possess intrinsic value in the traditional sense, yet it has established itself as a store of value to most individuals in the crypto space and remains the most dominant and valued cryptocurrency at 34,500 for Bitcoin, underscoring the fact that forces beyond intrinsic or utility value play an essential role in determining its worth. It all comes down to speculation. Mime coins often borne out of Internet trends and jokes further emphasizes the point. Despite lacking any inherent utility or intrinsic value, those mime coins like Dogecoin have astounding market capitalization. Their value is largely driven by community support, speculation, and market sentiment rather than any tangible utility.

To argue that CEL token or any cryptocurrency for that matter is valueless based on its perceived lack of intrinsic value or utility is an illogical and legally-flawed premise. The cryptocurrency market operates on principals that often diverge from traditional financial markets. Factors such as community trust, speculative interest, and market sentiment often wield more insurance than intrinsic value or utility.

Furthermore, the intrinsic value argument fails to consider the potential future application of a token. Before Celsius filed the Chapter 11, we were all under the impression Celsius would reopen and CEL token would be playing the exact same role as it always has. After the Chapter 22 filing, that all changed. Yet just because a token's utility value might be low or even nonexistent at a particular point doesn't negate its potential future utility or the speculative value attributed to it by the market. And that is what matters. Asserting that the CEL token or any cryptocurrency has no value based on a perceived lack of intrinsic value is not just an oversimplification, but is misleading and just plain wrong.

The cryptocurrency landscape replete with examples like Bitcoin and various meme coins underly the fact that intrinsic value is just one of the myriad of factors influencing cryptocurrency valuation. The argument that CEL token has or has no value based on this sole criterion lacks depth and fails to capture the broader dynamics at play in the digital currency world.

The following data from coin market (indiscernible) showcase the expansive trading volume for CEL token since its inception. Total lifetime CEL token value traded, $9.55 billion. Total CEL token value traded up to petition date, $6.6 billion. Total CEL token value

traded post-petition, $2.6 billion. Non-dislocated market data for total CEL token value traded, $5.9 billion.

The concerns raised about potential market manipulation and insider trading exist. However, the scope and breadth of CEL trading activity totaling over $9.55 billion over five years created the context within one must examine these concerns. With a CEL token average high of one-thousand-six-nine cents and an average low of one-thousand-fifty-six cents. Principal here is the sheer scale of this transaction. The clear manipulation or undue influence on CEL token's value, there would need to be evidence suggested by a significant portion the $9.55 billion was controlled or influenced by insiders. Without such evidence, further manipulation on such an expansive market is akin to alleging that a single cup of water could influence the water levels of the Hudson River. In light of the presented metrics, it is valued for the Court to differentiate between speculative claims and concrete evidence. To date, no conclusive evidence has been provided that indicates that a sizeable portion, let alone the majority of the CEL token trading activity was manipulated by insiders. As such, more allegations without substantial truth cannot undermine the credibility and value of such a broadly-traded token.

The litigation environment is replete with

accusations and charges. However, the cornerstone of justice lies grounded in decisions and verifiable facts. As the court ventures into determining the true value of the CEL token, it is essential to weigh the methods and reports grounded in factual data against speculative and unverified claims. In the absence of evidence satisfying the burden of proof regarding market manipulation, the Court must anchor its judgment in objective data and methodologies presented ensuring that justice both is fair and evidence-based.

Lastly, one matter which calls into question the integrity of this entire matter is the alleged placement and (indiscernible) immediately and formerly of White & Case, the UCC's counsel --

THE COURT: That's it, Mr. Davis.

MR. DAVIS: (indiscernible).

THE COURT: Mr. Davis, that's it. We're done. You filed that frivolous motion. I denied your motion. So that's the end of the subject. Your time is up.

Mr. Kirsanov, you are next.

MR. KIRSANOV: Good afternoon, Your Honor, and thank you for allowing me to speak today in opposition to confirmation of the plan. As it stands, I do not believe the plan is confirmable. And I will be addressing my concerns today.

There are some very serious concerns I have which

include ballot integrity, which is alarming. But there have been such contradictions to what has been clearly spawn into the balloting.

Could I have my first slide please come up?

THE COURT: All right. Mr. Kirsanov -- 3918 is Mr. Kirsanov.

MR. KIRSANOV: Thank you, Your Honor.

THE COURT: All right. It will be up on the screen in a second. Are you able to observe what we put up?

MR. KIRSANOV: Yes, Your Honor. I see it.

THE COURT: Okay. All right. Go ahead, Mr. Kirsanov. If you ask Mr. Lopez to switch pages, he'll do that for you. Okay?

MR. KIRSANOV: Yes, Your Honor. Thank you. I would like to begin by addressing my journey with the issues I have had with Celsius where I could not transfer funds from my custody account as early as April of 2022 before the freeze. I was locked into this bankruptcy against my will with my CEL token. I was not even able to transfer my initial full eligible custody settlement until the Debtor's custody wallet shortfall issue was resolved weeks later with a half a million CEL token deposit to their custody wallet.

My calls for disbursement in an alternative cryptocurrency as called for in settlement were met with silence. And numerous withdrawal attempts were cancelled

until the shortfall issue was resolved. Next slide, please.

As shown in the Blonstein declaration the assets for CEL did not meet the liability ahead of the freeze. Next slide, please.

Even expert witness Mr. Galka was not sure why I could not withdraw my funds, and the error message did not make sense. Next slide, please.

Mr. Galka had also indicated the price of CEL did exceed several dollars following the bankruptcy. Next slide, please.

I would like to talk about Mr. Max Galka's support. When asking Mr. Galka when the custody wallet was created, he had indicated he did not know. However, his sworn report had indicated the custody wallet was created in April of 2022. Mr. Galka had also testified he did not rely on the exhibits when they were presented to him for his report. Your Honor, you had mentioned that you were at a complete loss when it came to this.

Mr. Galka had testified that his company obtained Series A funding from Alameda Research. In the transcript I submitted to the Court with regard to the criminal case of the United States v. Sam Bankman-Fried, Ms. Ellison, the CEO of Alameda Research, indicated in her notes discussing selling billions of dollars' worth of Bitcoin if it went above $20,000 with Mr. Bankman-Fried, the CEO of FTX. The

price of Bitcoin at Celsius bankruptcy filing was $19,880. Your Honor, I find this extremely concerning. Next slide, please.

I would also like to talk about how the bulk of the ballot has been misrepresented. In this memorandum of law by the Debtors, it is said that I had voted in favor of the plan and that I am not a dissenting member. This is misrepresentation of my vote and attempting to be weaponized against my objection. Next slide, please.

Your Honor, in these final tabulation results in the custody class, there are nine dissenting CEL token holders with a monetary majority of -- excuse me -- $197,912. It is unclear why the already-settled custody class has a 25 cent CEL valuation here, or really any other class as there has been no reading of valuation aside from petition date values. Next slide, please.

Your Honor, in this slide from the Schedule F, my custody assets reflect having $749,200 CEL tokens in my custody account. And at 25 cents of valuation, my voting weight was $187,300 in the custody class. This is $600 below the rejections in the tabulation. Next slide, please.

In studying the top ten CEL holders in custody, the next nine CEL custody holders; monetary weight could not account for my voting weight. How could I have voted to accept the plan when the balloting shows otherwise? Next

slide, please.

Your Honor, here are the detailed Schedule F holders. What I found particularly interesting is CEL holder number five's custody account was missing (indiscernible) withdrawal Schedule D. However, it is found in the statement of financial affairs. That amount was almost 54,000 CEL tokens. The number five reached out to me. And it was Mr. Otis Davis who did confirm indeed he had CEL in custody and has it even today.

Not even the next top ten CEL holders in custody could amount for my voting weight in the custody class. From my understanding, he had about a 15 percent voting turnout or 20 percent. To exceed my monetary voting weight, the next 14 CEL token creditors in monetary value after me would all have needed to vote no to pass my monetary value. Next slide, please.

Your Honor, the CEO, CRO, and CFO, Mr. Ferraro, was unaware that the CEL token holders in the custody class voted to reject the CEL token settlement and they did reject it in a monetary majority. Next slide, please.

Your Honor, my thoughts on the balloting are straightforward. There has been misrepresentation. I do not believe anybody else in the custody class could have determined what their vote was had it not been for my monetary majority rejecting as shown in the balloting. My

voting results were refused to be shared with me even though they were listed as an exhibit.

Creditors deserve to know what their precise voting results were. I believe Bankruptcy Code 1144 would apply to this matter. Next slide, please.

Your Honor, in my interactions with the UCC and White & Case, knowing about my situation with my CEL in custody since February, they have not acted in my fiduciary interest. I was never invited to talks as the largest CEL token holder in custody and they have gone against my best interest by seeking to devalue my assets by over $400,000 of petition date value.

I ask that you do not grant any releases from answering why they have failed to act as a fiduciary to a creditor such as myself.

I would also like to note that the Custody Ad Hoc Group did not appear to make closing remarks in support of the plan today. The Debtor's slide, however, indicates affirmative support. The Custody Ad Hoc Group has rejected my numerous requests for help even though -- even to become a formal member for representation even though I have financially contributed to their legal fight. Next slide, please.

Your Honor, pursuant to the custody settlement, it is clearly written that I was able to reject the plan of my

CEL token assets in the custody class as I was prevented from withdrawing my pure custody assets as a result of having an outstanding loan. The Debtor's counsel confirmed this to me in dialogue. Pursuant to the Section 1125 of the Bankruptcy Code, the requirement is clear to have adequate information to make an informed judgement on the balloting.

I was not provided such clarity. And now my vote is being misrepresented. My 6A ballot included my (indiscernible) pure custody assets in dollarized value. Next slide, please.

Your Honor, on the 27th of September after balloting, there was a language change that went into the plan indicating the deactivation date price will now be 25 cents for CEL token. At this price, neither the Debtor, the UCC, or anyone can guarantee this price as higher or lower than market values. After bankruptcy, the price of CEL token exceeded several dollars. Even during this confirmation hearing, the price exceeded 25 cents. Why is anything less than market values or petition date values attempting to be forced on me? This was an adverse change and I interpret this violated Code 1127 as I am a dissenting member. Next slide, please.

Your Honor, on this accountholder claims calculation, it indicates CEL token in custody is exempt from the 25 cent valuation, yet it was applied to the

custody class included in the monetary calculation in the ballot. My liquidation value and my CEL token that is classified as pure custody is 100 percent. That's 81 cents. Next slide, please.

Your Honor, an example of another asset that Celsius -- I will present to you the MANA ask. The petition day value of MANA was 80 cents. The current price is hovering around 30 to 35 cents. The Debtor must return equal or greater value in accordance to the liquidation value asset on deactivation pricing as well. Next slide, please.

In Hawaii, the first 90 days of distribution on the schedule indicates only cash and perhaps Bitcoin and Ethereum would be distributed. All other asset account types use petition-date values. How is it fair and equitable for residents of Hawaii that an asset may not meet its liquidation value?

THE COURT: Are you in Hawaii?

MR. KIRSANOV: I have a home in Hawaii, a place I call home in Hawaii, but I am presently not in Hawaii, sir.

THE COURT: All right. I'm going to -- finish up. You've already run out of time. But you're not one of the people in Hawaii that's affected by this provision.

MR. KIRSANOV: Well, I would be affected.

THE COURT: You're not affected by it, Mr.

Kirsanov. Finish up.

MR. KIRSANOV: Next slide, please. Your Honor, there are some instances where I have demonstrated where best interests are not met in Hawaii in regards to the activation date pricing. The activation date pricing also affects everybody else. And with around a 20 percent voting turnout, it is fair to say many people have moved on and simply will receive a deactivation day dollarized check. This must also meet best interests. And I do not believe this meets best interest, and it violates Section 1129. Next slide, please.

This is my last slide. It is the creditor's right to pursue when they want to receive their assets. This is not a decision that the Debtor makes. This includes cashing the deactivation date check. All methods of distribution must meet best interest. The current plan proposes to give me 30 cents on the dollar when my liquidation value for my pure custody CEL is 100 percent, which is 81 cents on the dollar. I want to reserve all my rights with regards to these concerns.

Your Honor, I want to thank you for allowing me to make my closing arguments today. This has been an incredibly difficult time to represent myself on short notice after I interpreted an adverse change in the ballot. I immediately became involved in the process the next day

when I interpreted them as such.

English is not my first language, and I do apologize to the Court for any mistakes I've made in this process. I have tried to communicate with the Court and fellow creditors as best as I could.

I ask that you not confirm this plan, as there are some very serious concerns that remain to be addressed. Thank you, Your Honor.

THE COURT: Thank you, Mr. Kirsanov.

Artur Abreu. Mr. Abreu?

MR. ABREU: Can you hear me?

THE COURT: Yes, I can.

MR. ABREU: I turned on my camera. I'm not sure if it's being seen. You never know with AI.

THE COURT: There you go.

MR. ABREU: Okay.

THE COURT: We can see you.

MR. ABREU: Yeah. I'm just going to give a statement. It's about CEL.

Your Honor, I come before this court as an international creditor who onboarded several of my family members to join Celsius network. At the time, I took diligent steps in reading Celsius Network terms of service, careful reviewed my loan agreements and took loans against CEL, BTC and ETH, all of which I paid around the LUNA event,

which was May 12th. I even contemplated the possibility of small holds in the balance sheet before the polls. However, I don't think anyone had any idea or was prepared for the level of misrepresentation and how basic fundamental practice were not implemented in Celsius.

My involvement with Celsius Network CEL token issue started during the polls via Twitter, or now known as X, eventually leading to a massive following of approximately 4,000 accounts in two profiles. A substantial portion of this following centers around CEL tokens and concerns related to the potential manipulation of CEL. I would not be here before this court if Celsius Network had not suspended CEL withdrawals. When Celsius paused withdrawals, in my opinion, that effectually categorized itself as a debt that needed to be repaired. In doing so, they eliminated the opportunity for CEL token holders to mitigate their losses and speculate on the reorganization.

I also find myself before Your Honor as I firmly believe there are material omissions to distort several key issues, some of which you identified, such as the omission of a CEL price from the initial Galka expert report and the lack of representation for CEL token holders in the decision-making process.

During the 28 September hearing, when Your Honor inquired about potential consequences, top price were set at

the petition. The debtors contended that it will dilute creditors. However, this dilution and impact of CEL were never clearly stated in court or during the ballot process. Is it possible to estimate the potential dilution? I believe so, and I did so by utilizing the data submitted by Celsius to the court of their coin reports, set appropriate market prices and then expected recovery and the expected recovery indicated in the ballot. In conjunction with a CEL price of 20 cents and accounting for the excluded parties, the dilution I reach was $1.98. This was my calculation. I cannot reach assess the metrics of the (indiscernible) box or the withdrawal settlements.

I did file a motion 3835. I do not know if I made it correctly, but it was just to put this number to the court to have an idea what sort of average impact of the recovery we are talking to creditors. I also question if there was ever attempt by the debtors to reach a settlement concerning CEL. Your Honor has consistently emphasized the importance of settlement in bankruptcy proceedings, but I question whether this can apply when dealing with a class that lacks proper representation, consists of only a handful of pro se creditors. I recall the palpable disappointment expressed by Mr. Santos Caceres here in court when the debtors claimed to have attempted to settle with him and Mr. Caceres stated only 1 cent was proposed to increase in his

recovery. No real discussion ever happened.

I believe if a real settlement effort had ever been undertaken, the discussion would have centered on the broader impact of CEL on the estate. Measures have been explored such as capping the price based on the total CEL token claims, allocating some of the litigation proceedings from actions against insiders and other parties linked to CEL manipulation or maybe even utilizing Celsius tax experts to offset CEL compensations with the future taxes these formal employees will pay. It's my belief that no sincere settlement effort was made, and I trust Your Honor grasps a similar point.

In regards to the CEL price, it initial was offered at 20 cents, one of the few of the initial coin offering price of the creation of the company. Subsequently it was raised to 25 cents. However, the debtors' expert witness report failed to provide a specific price and instead a supplemental report was filed with a broad market price ranged from zero cents to 35 cents. It is a margin of error of 100 percent.

I underline the expert repeated acknowledgments of the challenges posed by setting a price primarily due to locking of 94 percent of the CEL supply waiting Celsius and the associated volatility in bid ask spreads and abnormal volume being traded. However, the experts on charts, on his

reports, Pages 37, the first report, Pages 37, 38, inadvertently revealed that the price began to dislocate days prior to the poll's announcements. But there was a brief two-week window before June 10th where CEL price remained unaffected where the volume was within the normal range, CEL token from users were available for withdrawal and there were indications of Celsius Network less than ideal financial state.

I question why this period was not utilized to establish a price unaffected by the highlighted conditions of Mr. Galka's own report. On the October 3rd hearing, Christopher Ferraro, and I now quote him from the transcript, "It's hard for me to understand a token that is represented and market has a utility token in which the disclosed statements say that if the platform were ceased to operate, it will become worthless. It's hard to me to believe why it will go up." To this, Mr. Galka in his report stated it could even be zero. But some questions remain. Did the former CEO ever inquire in social media where CEL token should be included in a recovery plan?

In my inquiry to Mr. Christopher Ferraro, he asserted that CEL was never excluded from the discussion and there was an iterative process leading to the current plan. Prior to the emergence of the novel proposal, there was a leaked plan known as Kelvin, which even the UCC acknowledged

on their Twitter account featuring CEL token as a prominent component.

Furthermore, the UCC member Thomas DiFiore in a town hall on October 27, 2022 reiterated the intention to maximize the use of CEL and the CEL tokens held in treasury. Not only he failed to disclose that his CEL holdings had been liquidated through a loan, a fact that I believe only came to light during emergency meeting here in court. Given the circumstances as of October 27, 2022, there remain a palpable interest in preserving CEL value, and it's difficult to argue that it had ever a zero price as of the petition dates.

In the days leading to the petition, Celsius Network continued to pay hundreds of millions of blockchain overcollateralized loans, indicating that they possess a level of liquidity that could facilitate a reorganization effort. While I'm uncertain if Mr. Galka was privy to this information, it is evident that UCC and Christopher Ferraro at the very least misrepresented their belief that CEL token had no value following Celsius bankruptcy filing. Its more severe interpretation, it appears that they might have misled the court under oath.

THE COURT: Mr. Abreu, you have one more minute.

MR. ABREU: Thank you. Thank you, Your Honor. I could draw further in the case of VGX, a token from Voyager

that engaged in similar business activities to Celsius that faced bankruptcy and operating within the same timeline. It's perplexing to me that Mr. Galka did not regard VGX as a comparable coin to compare CEL and instead chooses a token like HEX, which has no utility, has an annual inflation rate or stacking and lacks an official company or headquarters.

On the examiner's report, Shoba Pillay, on Page 124, indicates that Celsius purchased 558 million worth of CEL tokens, a figure curiously omitted from Galka's report. The actual customer estate, according to Mr. Galka, amounted to 128 million. This is a wide error that I don't think it was probably there.

So I'm ending my statement. In closing, I assert that all creditors, except for insiders, are the victims in this case to varying degrees. I dare to say that CEL holders are among the most severely affected, starting from the inception of Celsius Network, where internal communications reveal the deliberate action of the fact that their ICO, initial coin offer, did not reach the 50 million mark. And from Mr. Galka's cross-examination, the average purchase of CEL token over the counter was around $3.72.

In the bankruptcy, the UCC in their social platforms kept alluding to making use of the value of CEL in the treasury until the end of October, and I believe only in 2022 was the 20 cents mentioned. Celsius removed the

ability for certain creditors to sell and prevent further losses. I hope that I could at least contribute to properly representing most of the issues that CEL token holders, and hopefully this leaves some doubts to the judge.

I just want to finish to add to the fact that the diluted impact looked small according to my calculations, and that the current appreciation in the case of BTC and other cryptos today has reached a two-year high which should increase the average recovery by a few points, making it very easy for the judge, if you so choose, to force the petition price of CEL, that you will not affect the average recovery that was highlighted for all voters in the ballot.

THE COURT: All right. Thank you very much, Mr. Abreu.

MR. ABREU: Thank you for giving --

THE COURT: Thank you.

MR. ABREU: Thank you for giving me chance to speak.

THE COURT: All right. Mr. Bronge?

MR. BRONGE: Hello. Can you hear me?

THE COURT: Yes, I can.

MR. BRONGE: Yes. Good afternoon, Your Honor.

THE COURT: Are you able to turn the camera on?

MR. BRONGE: I'm not able to turn the camera on, I'm afraid. I hope that is all right.

THE COURT: Go ahead.

MR. BRONGE: Yeah. So first, I would like to say that I have not accepted the plan, nor the class claim settlement. And I have chosen here not to delve into the detailed response to the debtors' presentation, as I have meticulously and exhaustively addressed all their points in my last filing on the docket, 3908. So I would hope they actually will read this and understand my position.

Instead, I wish to draw your attention to the three fundamental arguments that underscore the essence of my case and that I have detailed in this filing at Docket 3908. First and foremost is the issue of the legal ownership title. The ownership title on my bitcoin collateral for the loan 31904 should not be a point of contention. It is a legal fact, explicitly and unambiguously stated in the governing agreements. I am the holder of the legal title of the collateral as per the terms of a binding agreement. I urge the court to positively recognize and declare this fact. Challenging the legal ownership title in this case is to undermine the foundation of the legal system, the sanctity of contracts and the rights of individuals to their property. Furthermore, more in the view of my arguments and all the supporting evidence that I have presented in Docket 3908, it's clear that the court should also declare the same for my other three loans.

Secondly, I will bring your attention to the unfair valuation of the collateral under the proposed plan. The loan agreements in question explicitly state that the conversion between digital assets and fiat currency shall be done at market prices. The proposed plan deviation from this clause is not just a breach of contracts, it's a betrayal of the trust that should exist between a debtor and a creditor. The proposed mix of petition and market prices is very likely to result in additional loss of bitcoin collateral for me. I implore the court to uphold the integrity of the agreement made in good faith and order that market prices will be utilized for all valuations and conversions of collateral as per the terms set forth in the loan agreement.

Thirdly, although I have myself substantial Earn claims, I want to address the subordination of Earn accounts. Many regulatory bodies have clearly classified these accounts as securities and investment contracts subject to specific rules and regulations. In my questioning of Mr. Campagna, he also agreed that in a Chapter 7 dissolution, I would get a better recovery as Earn would be secured and subordinated.

Thirdly -- sorry. I would request that the court rectify this injustice and ensure that the collateral claims are rightfully prioritized in distribution, regardless of

the plan being confirmed or not.

So I additionally would like to address the case law that the debtor had in their presentation today. It's Secure Leverage Group v. Bodenstein that they use as support for their claim that the collateral should be debtors' property. My analysis of this case is that the debtor here was kind of a trading broker firm, facilitating or performing trades for customers and for customers' benefit. The context is therefore very different to a straight collateral loan agreement, where customers are not trading, or where any trading done are not for the customer benefit.

In the loan agreement, customer provides funds as security for a loan and pays an interest on that loan. Any agreed use of the collateral is purely for the lender benefit and risk, and this is stated in the loan agreement and in the risk disclosure. Therefore, the context of that case has little or no relevance to the loan agreements I have with the debtor.

Your Honor, finally I would like to say it become obvious in my last filing that the debtor and its counsel have employed deceptive behavior and systematic mis-referencing in their responses to my concerns. Thereby, they are obfuscating the correct interpretation of agreements, clauses and paragraphs in order to support their own incorrect narrative. Examples of this are the omission

of the last paragraph of Clause 4B in Version 5 of the general terms of service, the repeated and consistent references to versions of agreements that are not valid for my loans, and also renaming of claims and clauses.

Briefly, I would like to address what Mr. Koenig said in his address this morning. I do not concede that Number 9 version of the loan agreement transfers title. It is at best ambiguous. I would also like to address his statement that the text he presented on his Slide Number 20 transfers title. That identical text is by Your Honor yourself said not to transfer title in the Earn ruling. You can see that on Page 38 and 39.

So the intentionality has become clear when considering that the debtors' efforts to exclude from evidence Pages 1 to 13 of the Mashinsky declaration in Docket 393. This particular piece outlines the validity periods of various agreements and the debtor continuously misrepresent which versions is valid. So deliberate distortions of fact and manipulating references has created ambiguity in my case where none exists, and it casts a shadow over the integrity of this case. These behavior do not only undermine the trust in the courtroom, but also strikes at the very heart of justice. I implore Your Honor to address this misconduct, to restore transparency and trust that should be the bedrock of the legal system.

In conclusion, Your Honor, I seek the rightful resolution on my case by the court declaring the collateral my legal property, not part of the debtors' estate, but encumbered until loan agreement is fulfilled, by using market prices for any valuation of collateral and by subordinating Earn accounts in any distribution.

I also request the court to put a stop to the machinations and misbehavior of the debtor and its counsel and to reaffirm the principles upon which this legal system should rest: fairness, justice and the upholding of contractual obligations. I sincerely hope Your Honor will impartially weigh the evidence, uphold the law and deliver a verdict that reflects the essence of justice. Thank you for listening.

THE COURT: Thank you very much, Mr. Bronge. David Schneider is next.

MR. SCHNEIDER: Can you hear me, Your Honor?

THE COURT: Yes, I can.

MR. SCHNEIDER: Okay. Thank you. The first thing is --

THE COURT: Are you able to turn a camera on?

MR. SCHNEIDER: No, sir. I'm using my phone.

THE COURT: All right. Go ahead, Mr. Schneider.

MR. SCHNEIDER: The first thing I'd like to mention is that I fully support Mr. Phillips's objections

and arguments and his conclusions that he has come to. Okay. So starting off basically, the heart of my objections and my -- against the plan is the plan is illegal. The illegality of the plan. Essentially, the contract doesn't allow for it. It's unconstitutional, and common law doesn't permit it either. And I'll go through it one by one with you. And all this is laid out in my original, my objection to plan confirmation, Document Number 3547, and then my proposed findings of fact, conclusions of law and additional briefing, which was just entered into the document this afternoon, just shortly before the court hearing started, but which was filed on time --

THE COURT: Mr. Schneider, anything you filed today is too late. I'm sorry. We've passed the deadline. If you filed something today, it's not going to be considered.

MR. SCHNEIDER: No. I filed it Friday on time. It was filed on time, and I filed a file Friday, but it wasn't entered onto the docket until this afternoon.

THE COURT: All right. If it was filed on Friday, it will be considered, Mr. Schneider. Okay. The fact that it didn't go on the docket until today, if it was filed on Friday, it will be considered.

MR. SCHNEIDER: Okay. All righty. So starting off with basically -- I need to get my glasses on. The

debtor is legally obligated to pay creditors in digital assets per the contract, and stating the relevant part in the terms of use, it states, for the avoidance of doubt, any repayment shall be in kind, i.e., in the same type of eligible digital assets loaned by you.

Every version of the terms of use requires repayment of creditor assets solely in the form of digital assets. No version of the terms of use has provisions allowing debtor to repay creditors their digital assets in any form other than in digital assets. Excepting for any bankruptcy laws mandating cash to be the form of creditor repayment, debtors are legally obligated to repay creditors in the form of digital assets. Article 1, Section 10, Clause 1 of the United States Constitution forbids any law impairing obligation of contracts.

The debtor is withholding a portion of creditors' crypto recovery, i.e., $450 million of cryptocurrency that will seed the NewCo, and instead of repaying creditors their due recovery in crypto by contract, debtor is repaying creditors with NewCo common stock.

THE COURT: Go ahead, Mr. Schneider.

MR. SCHNEIDER: No version of the terms -- no version of the terms of use has provisions allowing debtors to repay creditors in the form of common stock. The NewCo plan provides no option for creditors to reject debtors'

debt-for-equity transactions. Debtors' debt-for-equity Scheme requires consent by the creditors in order for debtors to issue common stock in --

FEMALE: Jesus fucking Christ.

THE COURT: Excuse me. I'm sorry. Mr. Schneider is speaking. Anybody else will be cut off if they interrupt. Go ahead, Mr. Schneider.

MR. SCHNEIDER: Thank you, sir. Debtors' debt-for-equity scheme requires an agreement with option to reject it. An option to reject debtors' debt-for-equity scheme is required for creditor -- for creditor consent to be proper. A transaction such as debtors' debt-for-equity scheme that provides no option to reject it is improper, unconscionable, being merely a one-sided contract of undue influence without a valid meeting of the minds and it is therefore unenforceable.

Debtors' debt-for-equity scheme violates creditors' right to equal protection under the law because the scheme gives no option for creditors to object or reject the securities offering of common stock. Creditors are forced into it basically. They have no option. If it's to reject it, the only way they can reject it, such as myself, is to vote no on the plan. But if the plan is confirmed, then I have no option to reject the offer, the securities offering to me to be paid in common stock rather than to be

paid in cryptocurrency as contract requires.

A presumption that a yes vote to accept the plan is tacit acceptance of debtors' debt-for-equity scheme is wholly flawed for, as shown above, debtor must receive proper consent from creditors. While the presumption protects the liberties of creditors who actually want the neutral securities offering, it tramples on the liberties of creditors who don't want the securities offering but would rather receive their crypto as according to contract, that they have an agreement with the debtors.

Debtors' debt-for-equity scheme unconstitutionally forces creditors into -- okay, so that's concerning the contract as far as the unconstitutionality of the debtors forcing creditors to receive common stock in place of cryptocurrency. Debtors' debt-for-equity scheme unconstitutionally -- and the second part as far as the unconstitutionality of it -- debtors' debt-for-equity scheme unconstitutionally forces creditors into a profession.

The NewCo plan is unduly forcing creditors to become venture capitalists and/or investors with their securities offering of common stock. There is no constitutional authority allowing for government to dictate the profession a person must employ their labor at. Creditors have property in their right to be free to choose whatever profession is deemed proper to employ their labor.

Therefore, their offering of common stock to creditors without proper consent is unconstitutional and it's forcing debtors -- or, excuse me, creditors to enter into a profession which is against their will and which is unconstitutional. The government has no authority to force an individual to choose any profession against their will, and that's essentially what this is doing.

Then, on the third point of case law, case law shows courts' power to convert debt to equity is limited to debt that is at least partially secured or debt that was an infusion of capital. And this is regarding the Southern District of New York. The Southern District of New York provides a textbook attempt of a recharacterization of a debt to an equity position in a Chapter 11 case. In regarding Live Primary, Southern District of New York, March 1, 2021, I believe this is your case, Judge, Your Honor. In the Celsius bankruptcy, the plan proponent seeks to force average customers to become equity holders -- okay.

THE COURT: Mr. Schneider, you have --

MR. SCHNEIDER: In that case --

THE COURT: Mr. Schneider, you have one more minute.

MR. SCHNEIDER: Okay. In that case, it was referred to in Live Primary, which states that the plan proponent seeks to force average customers to become equity

holders, which goes well beyond the purpose or authority of this court, even given the broad reach of Section 105(a). Recharacterization is appropriate where the circumstances show that the debt transaction was actually an equity contribution.

Eleven-factor test in Autostyle does not apply to the fact of creditors' claims. So in almost any analysis, forcing creditors' claims such as Schneider's into an equity position is inappropriate at every level. After standing through maybe several hundred Second Circuit New York bankruptcy courts, it seems obvious that any power to convert debt to equity is limited in cases where the debt is at least a partially secured debt or it is obvious that the debt was an infusion of capital to keep the company afloat.

THE COURT: All right. Thank you very much for your --

MR. SCHNEIDER: There was --

THE COURT: Thank you very much for your statement. But your time is up, Mr. Schneider. Cathy Lau is next.

MS. LAU: Yeah. Okay.

THE COURT: Go ahead.

MS. LAU: Yes. Sorry, I'm not used to doing this. Can my demonstratives be put up, please?

THE COURT: Sure. It's 3921.

MS. LAU: Will this count as part of my time? Because I already don't have enough time.

THE COURT: No. Just take it easy, Ms. Lau.

MS. LAU: Okay. Okay.

THE COURT: It's on the screen now. Go ahead.

MS. LAU: I need it to be in where the votes are, like things that people are saying, not my letter.

THE COURT: Page 2 of Exhibit A.

MS. LAU: No, the next one, please.

THE COURT: Three of nine, Exhibit A.

MS. LAU: Yes. Okay. Thank you. Okay. So I actually read the whole disclosure statement, and what I discovered spurred me to write and submit an objection, even though I have no legal background know what I was doing because I felt I had to address the injustices I found or forever regret it. I strongly object to the plan and hope that what I have to say is able to make a difference and help create a fairer and more positive plan for Celsius.

My key finding from reading the disclosure statement was, and still is, that the plan was rigged to give insiders, those tasked in the plan's creation, the ability to insert benefits for themselves into the plan while removing rights, some of which had already been granted to creditors that had no inside involvement in the shaping of the plan. The plan and the voting ballot were

presented in a way that if creditors voted to reject the plan, they would not be able to opt into the class claim settlement, which would mean that they would be forced to hire their own lawyer to litigate for them to get any of their claim back. And if they couldn't afford to litigate on their own and were thus forced to accept the plan, they were then forced to opt into a third-party release that released all plan creators in perpetuity from being litigated against by those who opted in.

So basically the only way to opt out of releasing the parties involved in creating the plan was to vote to reject the plan. And the only way a creditor could afford to reject the plan was to have enough money to be able to hire a lawyer to allow to opt out of the class claim settlement. In short, the only people who had a true choice in deciding whether to accept or reject the plan or opt into or out of the third-party release were those rich enough to be able to afford their own litigation fees.

It angers me every time one of the people involved in creating the plan brings up how a creditor can't say that they didn't agree with an item in the plan because they voted to accept the plan when the plan creators rigged the way the plan was presented so that we were forced to accept it no matter what and how many items in the plan we disagreed with. I feel disgusted that the argument is being

used that because CEL token holders said yes to the plan, they support the 25 cent CEL token valuation in light of this. It was flat out deceptive that they accepted the plan and then used our first acceptance of the plan as evidence of our overwhelming support of the plan and its 25 cent CEL token valuation.

I myself did accept the plan despite the numerous objections I have brought up, including the CEL token price and the third-party release, because I recognize the bind that the plan put me in that threatened to leave me with no part of my claim at all if I chose to reject it. The class claim settlement, which is presented as a convenience that allows creditors who aren't rich whales to get back the settlement we should be entitled to and more, is actually a mechanism removing the freedom of anyone but the richest of creditors to reject the plan because access to one's claims are withheld if one chooses to reject the plan.

The rigged voting results are then used to present to the court, the media and outsiders that the plan was such a success that it received an over 98 percent and 95 percent acceptance rate, when in reality there is no way of telling how many of these accept votes were coerced, since many of the whales with the most crypto who could have afforded to litigate themselves were given positions on the committee of unsecured creditors and the great majority of us creditors

could not, in reality, have afforded to reject the plan.

robomartin, in the first demonstrative, always recognized -- I mean, also recognized this. He said, in BlockFi we could vote yes and opt out, and you didn't have to vote yes to grant releases to get clawback releases for yourself. Celsius seems to have a bunch of contingencies, i.e., if you check this box, you can't check this one or vice versa or if you check this, you have to check this one too, but this one overrides this checkbox anyway, et cetera, et cetera. They're definitely playing a lot of games.

And cmbarc, another creditor in another Reddit forum, said, okay, but if you vote no and majority votes yes, you have to litigate yourself and pay your own lawyer. Most people can't afford that. Plus, if you didn't submit a claim by the deadline, your no vote won't do as much as, if I understand it at least. I'm happy to be proven wrong.

In the objection letter I initially submitted, I actually said that I voted to accept the plan while actually hoping it would be rejected because I couldn't afford to gamble losing my claim on the hope that others -- that enough others would vote to reject the plan to have my reject vote actually count for something, especially knowing how rigged it was. There is no way of telling how many creditors like myself were actually not okay with the plan, but knew that those who chose to reject would end up screwed

over depending how everyone else in the plan voted.

Another common theme when it came to voting was that people knew that the lawyer fees were eating away at our funds, with us having no control over this, creating the general sentiment that everyone should vote yes to the plan no matter what to prevent lawyers from continuing to take more and more of our money.

Some comments from creditors include -- I don't know if it's in another slide now -- from JaymZZZ, stop inventing (indiscernible) if we reject the plan, the lawyers will get rich and we'll get half of what we're getting now. And some other sentiments they said like voting yes here, let's get out of this ASAP. Vote yes, get this over with. In my humble opinion, everyone should just vote yes to cut the losses and move on. If you vote no at this point, you just want more suffering and less money in the end. No matter what your situation is, just vote yes and get this over with. There is no better option coming. What does a yes or no vote even mean at this point?

And then where -- sorry, I'm trying to scroll and it's -- so as their comments show, creditors were feeling so discouraged by how long the creation of this rigged plan had been dragged out and were so tired of being robbed of more funds and feeling so helpless and played around with that we already knew that if we voted no, the lawyers would just

find new ways to drag the plan out, to take even more of our money so that it was a lose-lose no matter what we voted. So that we should just vote yes to avoid even more games being played with us.

The reason I choose to contribute my objection is because I feel that plan creators have taken advantage of scourged feelings that have been instilled among creditors to insert benefits into the plan for themselves that creditors no longer have the fight in them to fight anymore.

Creditors of Flare already came and requested a ruling from Judge Glenn on the Flare token distribution and won the right to have our Flare tokens distributed to us. But the plan at the last minute stated that they are no longer going to do that, and despite my objection to it, I haven't seen anything address my objection to the robbing of the rights that was already granted to us.

I'm grateful that the U.S. trustee objected to the third-party releases because it feels like nothing would have been done if it was just us pro se creditors voicing our objections to it, even if we all did, because it really seems like all the lawyers have done to address our objections is ignore them or do everything they can to discredit them.

I can't believe that the amount of time that has been devoted to disparaging Hussein Faraj's testimony on CEL

tokens price when the expert they chose to raise up, Max Galka, had a clear conflict of interest in his connection to Alameda Research, which was a sister company to FTX, the company currently being sued for, among other things, shorting CEL tokens and a different person with no conflict of interest should have been chosen for a fair, unbiased take on CEL token's price.

Max Galka had every reason to value CEL token at zero when that was what FTX was trying to do when it forwarded it. It is ridiculous the amount of CEL creditor money the UCC has spent on Max Galka's testimony and the hours they clocked in at his, like thousand plus dollar an hour rate, when they should have put in the time to investigate Galka's background, as they should have with Emmanuel Aidoo's appointment to the NewCo board, despite his poor tax history, calling into question his competence in helping lead our new company.

Why is it that so much effort has been put into discrediting pro se creditors and the people they have brought on to testify when the backgrounds of people like Galka and Aidoo are not brought up? Because they conflict with the narrative the lawyers want to present and the appointments they want to have allowed since they aligned (indiscernible) interests. Customers were forced to have their crypto converted to bitcoin and Ethereum despite the

major tax consequences and headaches attached due to the fact that it was in the interests of big fish to have it like that and they had the money, power and influence to back that.

I found a discussion on Reddit between creditors that went like this. There is -- I don't know. It's one of my slides. There has been mention of all aspects being pulled into bitcoin and ETH. Are they really going to --

MALE 1: (indiscernible).

THE COURT: Please don't interrupt. Go ahead, Ms. Lau.

MS. LAU: There's been no mention of all assets being sold into bitcoin and ETH. Are they really going to sell stablecoins instead of giving out dollars? I feel like this has tax implications aside from all of the complications from partial payouts and claiming losses from fraud. Many like to know how to handle tax implications under various situations. I wish creditors having stablecoins returned to them as stablecoins in proportion of disclosure otherwise received in Bitcoin, ETH from (indiscernible) and selling them creates tax situations even though the total amount can be less than stablecoins.

THE COURT: You have one more minute, Ms. Lau.

MS. LAU: I think we can thank Simon for pushing to have anything in bitcoin and ETH unfortunately. That was

the outcome both in his vested interest and as he holds predominantly bitcoin. For anyone holding stables, it's undoubtedly going to create further unnecessary tax events with selling out. The theme has always been that getting the plan accepted as soon as possible and in turn getting our money back to us as soon as possible has always been pushed as a central benefit to creditors.

But I don't believe that it should come at the (indiscernible) sacrificing our freedoms to vote as we truly feel (indiscernible) be justified because of their ability to speed up the acceptance of the plan solutions. Other ways of the plan seem to include (indiscernible) those listed by Mr. Phillips, like UCC members adding themselves to the NewCo board and two of the law firms representing us directing the appointment of their various former clients and employees to various committees and boards and also how Chris Ferraro was named as planned administrator who will receive $15,000 a month the first month and $25,000 a month for all the months following.

On behalf of all other creditors who have balked at how much lawyers and accountants involved in this case are being paid, I protest such a high salary being paid to the litigation administrator. And we find it convenient that the plan creator, with some of the most clout in the plan's creation, would give himself that position and

salary. It's funny to think that --

THE COURT: All right. Your time is up. Ms. Lau, your time is up.

MS. LAU: Thanks.

THE COURT: Mr. Koenig, 15 minutes.

MR. KOENIG: Thank you, Your Honor.

THE COURT: If necessary.

MR. KOENIG: Thank you, Your Honor. Chris Koenig, Kirkland & Ellis, for the debtors. Your Honor, there's a fair bit in the record that was not admitted into evidence. This is a bench trial, not a jury trial. We didn't want to interrupt anybody, but we wanted to just note for the record that the documents that were admitted into evidence are at 3884 and 3885 were the submissions of the debtors and the committee about what was actually admitted into evidence.

Just briefly, I want to start with the U.S. trustee. I think she had two open issues. One was the exculpation of the NewCo. The NewCo has or is about to be created. The Form 10 is actually filed by the NewCo that we talked about earlier. That is going to take place before the effective date. So the exculpation is appropriate, we believe, for actions taken during the case. NewCo will be formed before the effective date, and so we believe it's appropriate for them to be --

THE COURT: Does the language limit their

exculpation to acts during the course of the case?

MR. KOENIG: Yes, absolutely. That's the exculpation generally for all exculpated parties or so limited at the request of the U.S. trustee. We clarified that language. As to the BRIC not being able to be qualified, I think Your Honor understood the point. We struggled with the ability to qualify any party's exculpation. The BRIC participated in these cases in a variety of different ways, from the auction to the backup plan itself, to preparing to go forward with the backup plan. I think Your Honor has the point there.

Ms. Cornell spoke briefly about the custody settlement releases and the 22 people. I just wanted to explain that really briefly, just for the record. There were individuals who took the custody settlement, were contractually obligated to vote for the plan and nonetheless tried to opt out of the releases. We spoke to Ms. Cornell. We included language in the confirmation order that carved out the ability for them to opt out of the releases if they did not otherwise vote for the plan because if they voted for the plan elsewhere, they can opt out of the releases. The other point that she made on the opt out, I don't know whether it was an objection or not, but she suggested that there were a lot of people who voted for the plan and tried to opt out. That's just the way that Chapter 11 plans work.

The plan is a contract. You can vote for it or against it. That's very typical I think in large Chapter 11 cases. I think that that's all I had on Ms. Cornell.

Mr. Phillips, just really quickly, he raised the issue of the emergence incentive plan, and Mr. Ferraro distributing that. The plan provides that the plan administrator has the discretion to evaluate paying those bonuses in conjunction with his discretion that is specifically set forth in the plan administrator agreement. And he can consider whether the metrics have been met, interpret the plan, interpret those sorts of things. But his discretion is pretty limited actually. And it's not as though Mr. Ferraro could just pay whatever bonus he wants. There's a plan that has been proposed, an emergence incentive plan. We believe it's appropriate under the circumstances.

Mr. Phillips makes much ado about the fact that so many creditors elected more liquid crypto. He believes that that means that the equity is worth less than what we valued at under the plan. There's any number of reasons why they may have done that. It may have been taxes, as Mr. Colodny said. It may just be preference for liquid crypto. These individuals invested in crypto in the first place. They may prefer crypto to equity. It doesn't mean that the equity is worth less. He applies a 30 percent discount to the NewCo

plan, but doesn't apply any discount to the winddown plan, the orderly winddown. He seems to want the orderly winddown, and he is arbitrarily applying a 30 percent discount to one instead of the other. I believe that the remainder of Mr. Phillips's issues are probably going to be addressed by Mr. Colodny.

Mr. Davis talked about 81 cents in a custody settlement. Just for the clarification, there was no 81 cents in a custody settlement. Under the custody settlement, holders got the right to receive the tokens themselves, whatever they turned out to be. Under the plan, we have 90 days to make those distributions. If somebody doesn't show up and withdraw their coins in those 90 days, we have to do something. We have to give the equivalent of those coins the best that we can. And what we're doing is for CEL token we're proposing to provide a 25 cent valuation, which is exactly the same as we're doing under the plan. So we think that that's appropriate. This goes a little bit to Mr. Kirsanov's issue too.

Mr. Davis raised the FTX $2 billion claim. It's a claim that is filed against FTX. We'll see where it leads. Obviously, we're going to be prosecuting, and the post emergence entities will be prosecuting that claim. But it doesn't mean that the debtors are going to receive $2 billion from FTX, which is itself deeply insolvent, it

appears. Mr. Davis's other issues, I think I'll just rely on the argument that I made in my opening argument that the key issue is what is the value of the CEL token as of the petition date in a Chapter 7 liquidation. And the only credible evidence is that the CEL token is worth zero or near zero.

Mr. Kirsanov complains about the fact that his vote was changed. Just to be clear, it was specifically noted in the voting declaration the number of people whose votes were changed just so that there was total transparency. He thinks that he has a gotcha. We actually disclosed it. He pointed -- Mr. Kirsanov pointed to a number of quotes of different witnesses that he asked whether they knew that he wasn't allowed to withdraw, and they said no. They would have no reason to know those sorts of things. I don't really understand what his point is there.

As I said in my opening, even if Mr. Kirsanov voted no, that doesn't change his class vote. He made quite a big to do about it, but that doesn't change the legal standard before the court. He pointed to a section of the custody withdrawal order, which is different than the custody settlement when he was talking about pure custody. There were two custody orders in this case. The first one was in December, and it allowed so-called pure custody that

had never been in Earn. You could withdraw that, and if you had less than 75/75 in the withdrawal preference exposure, you could withdraw that. He's pointing to that order that said, if you are a loan holder, you can't participate here because you don't really have pure custody. And he is conflating the pure custody order and the custody settlement order. I just wanted that to be clear for the record.

Mr. Kirsanov raised 1127(a). We've briefed this, but just very quickly, the point of this is that, as I said earlier, after 90 days, the custody holders are going to get the value of CEL that is determined by the court. We made it clear that that is 25 cents for both custody users and Earn users.

I believe Mr. Abreu's points were addressed adequately in the discussion of CEL token generally. He asked if we tried to settle CEL. We tried to settle everything in this case. I quipped a little bit in my opening argument that the court has had the opportunity to consider a fair number of settlements. We tried to settle this one too. We had an ad hoc group of CEL token holders. It just obviously -- we weren't able to get there with that group, although we did settle with several individual CEL token holders.

Mr. Bronge, on the loans, he cited a different portion of the terms of use that said that the borrowers

agreed that they had title. The fact that they had title before they transferred it to Celsius does not obviate the legal language and the terms of use elsewhere saying that they can convey that title to Celsius as part of --

THE COURT: You couldn't use as collateral something you didn't own.

MR. KOENIG: Exactly, and that was the point for Celsius is we wanted to make sure that if somebody transferred property to us, that you actually owned it and somebody else didn't own it and was going to sue us or something of that nature. He mentioned that he was concerned about the valuation of the collateral as of the petition date.

Of course, under Bankruptcy Code Section 502(b), the valuation of a claim is as of the petition date in U.S. dollars. He has a claim. He argued about 510(b), and that Earn should be subordinated wholly as a class. I would note a couple of things. First, the class claim settlement order included a note that the class claim could not be subordinated pursuant to Section 510(b).

But moreover, Section 510(b) can't apply to Earn. Section 510(b) talks about claims related to the purchase or sale of a security. The Earn claims are not for the purchase or sale of a security. They're for the return of if it is a security, and I'm not conceding that it is, the

return of the security itself.

I think in opening arguments, I forget whether it was me or Mr. Colodny likened it to an indenture. An indenture is a security. The notes are a security. Claims related to the purchase or sale of that security for fraud or misrepresentation or the likes, those are subordinated. It doesn't mean that the notes themselves are subordinated, and Earn is exactly the same result here.

Mr. Schneider made several different arguments that the plane was illegal or unconstitutional. I would just note in passing that Article 1, Section 8 of the Constitution authorizes Congress to make laws regarding bankruptcy. Congress enacted the Bankruptcy Code. He argued that the contract, the terms of use, is not -- that what is being proposed under the plan is different than what's under the contract. That's permitted by the Bankruptcy Code. That's how bankruptcy works.

Ms. Lau said that she couldn't opt out of the class claim settlement, but -- unless she voted to reject the plan. That's actually not right. You could vote against the plan and still opt out. It's the releases that if you voted for the plan, you were forced to grant the releases because, as I said earlier, the plan is a contract.

She complained that people may have had certain objections to the plan, that they were forced to either vote

yes or no. I would submit that the plan is a contract. It would be completely infeasible if 600,000 accountholders had the right to rewrite whatever provision it wants. The plan is a settlement. And I think you've heard throughout this trial that not everybody is happy with the plan, with all provisions of the plan. It's a settlement, and oftentimes what is required is for different parties to make concessions to get to a deal that is good enough. And the plan might not be perfect for everybody, but it's more than good enough to return the maximum value to creditors as soon as possible.

On the Flare token point that she raised, the court authorized the company to distribute Flare tokens. It did not require the company to distribute Fare tokens. So Your Honor, I did sort of a whirlwind there. I don't know if you have any questions for me or anything you'd like me to address. But I --

THE COURT: I don't. Thank you very much.

Mr. Colodny?

MR. KOENIG: Thank you.

MR. COLODNY: Very, very brief, Your Honor. Aaron Colodny, White & Case, on behalf of the Official Committee of Unsecured Creditors.

With respect to Mr. Phillips, I'll leave the misrepresentations of my testimony or my argument aside.

Safe to say we vastly disagree that people don't want this stock. What Mr. Phillips is ignoring is a large number of people, more than the amount that elected liquid crypto, that took the default election. And there taking the default election is electing half in stock or more in stock. NewCo presents an exciting opportunity here. It's going to be a first of its kind company. It's going to have a clean balance sheet and it's going to have a competent management and board which is going to be able to hopefully generate more value to people and bring them back to whole. That's the whole idea behind the plan and the creation of NewCo.

With respect to Mr. Ferraro, Mr. Ferraro, as Mr. Koenig described, verifies the metrics. They then have to be verified by the UCC. He has to come to us, show us the metrics have been hit before anything is met. So there is a check on unfettered discretion in that regard.

Mr. Davis and I don't agree on many things. However, one thing he did say is, and I wrote this down, you have to weigh the evidence against speculative claims, and Your Honor has the opportunity to have the evidence in front of yourself. You can make determinations as to credibility. We made our arguments. Mr. Otis, or Mr. Davis and Mr. Kirsanov have their own.

Lots of people have raised issues with Mr. Galka's connections to Alameda. Those were disclosed at Docket

Number 1009 in October and they also were allowed the opportunity to cross-examine him.

Mr. Schneider surprisingly raises that he doesn't agree that Version 9 of the loan terms of use transfer title. I don't know if this provision has been discussed specifically, but I'm referring to Docket 393, which is the Terms of use. On Page 936, under the heading "Collateral Number 3," and I'll read it into the record: Digital assets posted as collateral shall be the exclusive property of Celsius, and you grant Celsius your explicit consent to use such digital assets in accordance with Section 20 below for the full term during which the digital assets are posted as collateral.

And then lastly, a lot of individuals have talked about the committee's fiduciary duties to them. We have a fiduciary duty to all unsecured creditors, and that is what's embodied in the plan. This is our attempt to reach a fair and equitable distribution of the estate among a bunch of competing creditors. And I think that the vote speaks for itself. Thank you, Your Honor.

THE COURT: Thank you very much, Mr. Colodny. All right, that concludes all of the arguments. I'm not going to recognize anybody else for -- I've gone through the entire list that were included in the order with the allocation of time. All of the arguments are completed.

Mr. Adler, if you're going to submit any proposed language, do it by tomorrow. All right? It's my goal, as far as I'm concerned, all filings are complete. I'm not going to consider -- other than what Mr. Adler is going to file by tomorrow, I will not consider any further filings by any party, party in interest. It's my goal to try and resolve this expeditiously. The trial I was supposed to start this week has settled. So I have more time.

Thank you very much, everybody, for your participation. I'll just say we started this when we were still -- we started this case when we were in the midst of the pandemic. We were forced to have all hearings with remote. It was a test for all of us. There were very large numbers of people who appeared by Zoom. I tried my best at every hearing to get everyone who wanted an opportunity to speak to do so.

I think that it's been important to me, hopefully important to the process, that there be transparency, that everyone who had something they wanted to say relevant to an issue that the court was addressing had an opportunity to speak. I don't think there was any hearing when I didn't recognize everyone who raised their hand on Zoom to speak. I know there are very strong feelings in this case on all sides. The court will endeavor to do its best in reaching what I believe is a result required by law and the facts in

the case. I certainly appreciate the efforts of everyone in the case so far. We're adjourned for today.

MR. KOENIG: Thank you, Honor.

THE COURT: Karen, thank you.

(Whereupon, at 5:23 p.m., these proceedings were concluded.)

C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing transcript is a true and accurate record of the proceedings.

Sonya Ledanski Hyde

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Date: November 1, 2023

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